

T H E

1609/3769

JUSTICE of the PEACE,

A N D

PARISH OFFICER.

BY RICHARD BURN, L.L.D.

Chancellor of the Diocese of CARLISLE, and one of his
MAJESTY'S Justices of the Peace for the Counties
of WESTMORLAND and CUMBERLAND.

The TWELFTH EDITION.

V O L. III.

L O N D O N :

Printed by W. STRAHAN and M. WOODFALL, Law-Printers
to the King's most Excellent Majesty;

For T. CADELL, in the Strand.

M. DCC. LXXII.

Justices of the peace.

JUSTICES of the peace are judges of record, appointed by the king, to be justices within certain limits, for the conservation of the peace, and for the execution of divers things comprehended within their commission, and within divers statutes committed to their charge. *Dalt. c. 2.*

And a record or memorial made by a justice of the peace, of things done before him judicially in the execution of his office, shall be of such credit, that it shall not be gainsaid. One man may affirm a thing, and another man may deny it; but if a *record* once say the word, no man shall be received to aver or speak against it; for if men should be admitted to deny the same, there would never be any end of controversies. And therefore to avoid all contention, while one saith one thing and another saith another thing, the law reposeth itself wholly and solely in the report of the judge. And hereof it cometh, that he cannot make a substitute or deputy in his office, seeing that he may not put over the confidence that is put in him. Great cause therefore have the justices to take heed that they abuse not this credit; either to the oppressing of the subject by making an untrue record, or the defrauding of the king by suppressing the record that is true and lawful. *Lamb. 63—66.*

Hereof also it cometh, that if a justice of the peace certify to the king's bench, that any person hath broken the peace in his presence, upon this certificate such person shall be there fined, without allowing him any traverse thereto. *Dalt. c. 70.*

And that I may treat intelligibly concerning this office (of which lord *Coke* says the whole christian world hath not the like, if it be duly executed, 4 *Inst.* 170,) I will set forth.

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- I. *The office of conservators of the peace at the common law, before the institution of justices of the peace.*
- II. *The commission of the justices of the peace, founded on the statute law.*
- III. *The justice of the peace his oath of office.*
- IV. *Of fees to be taken by justices of the peace.*
- V. *Some general directions relating to justices of the peace, not falling under any particular title of this book.*
- VI. *Their indemnity and protection by the law, in the right execution of their office; and their punishment for the omission of it.*

I. *The office of conservators of the peace at the common law, before the institution of justices of the peace.*

Conservators by
election.

I. Of ancient times such officers or ministers, as were instituted either for preservation of the peace of the county, or for execution of justice, because it concerned all the subjects of that county, and they had a great interest in the just and due exercises of their several places, were by force of the king's writ in every several county chosen in full or open county by the freeholders of that county: As before the institution of justices of the peace, there were conservators of the peace in every county, whose office (according to their names) was to conserve the king's peace, and to protect the obedient and innocent subjects from force and violence. These conservators, by the ancient common law, were by force of the king's writ chosen by the freeholders in the county court, out of the principal men of the county; after which election so made, and returned, then in that case the king directed a writ to the party so elected, to take upon him and execute the office until the king should order otherwise. And thus the coroners still continue to be chosen in full county: As also the knights of the shire for the parliament. 2 *Inst.* 558, 559.

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2. Besides these conservators of the peace properly so called, there were and are other conservators of the peace by virtue of certain offices: As for instance; Conservators by office.

(1) The lord chancellor, and every justice of the king's bench, have, as incident to their offices, a general authority to keep the peace throughout all the realm, and to award process for the surety of the peace, and to take recognizances for it. 2 Haw. 32.

(2) Also, every court of record, as such, hath power to keep the peace within its own precinct. 2 Haw. 32.

(3) Also, every justice of the peace is a conservator of the peace. Crom. 6.

(4) Also, every sheriff is a principal conservator of the peace, and may without doubt *ex officio* award process of the peace, and take surety for it. And it seems the better opinion, that the security so taken by him is by the common law looked on as a recognizance, or matter of record, and not as a common obligation. 2 Haw. 33.

(5) Also, every coroner is another principal conservator of the peace, and may certainly bind any person to the peace, who makes an affray in his presence. But it seems the better opinion, that he has no authority to grant process for the peace; and it seems clear, that the security taken by him for the keeping the peace (except only where it is taken by him as judge of his own court for an affray done in such court) is not to be looked on as a recognizance, but as an obligation. 2 Haw. 33.

(6) Also, every high and petit constable are by the common law, conservators of the peace. 2 Haw. 33.

And it is said, that if a constable see persons engaged in an affray, or upon the very point of entering upon it, as where one shall threaten to kill, wound, or beat another, he may imprison the offender of his own authority for a reasonable time, till the heat shall be over, and also afterwards detain him till he find surety of the peace by obligation. 1 Haw. 137.

But it is said, that a constable hath no power to arrest a man for an affray done out of his own view; for it is the proper business of a constable to preserve the peace, not to punish the breach of it; nor doth it follow from his having power to compel those to find sureties who break the peace in his presence, that he hath the same power over those who break it in his absence. 1 Haw. 137.

3. There were also other conservators of the peace by tenure; who held lands of the king by this service, among Conservators by tenure.

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others, of being conservators of the peace within such a district. 2 *Haw.* 33.

Conservators by prescription.

4. Also there were other conservators of the peace by prescription; who claimed such power from an immemorial usage in themselves and their predecessors or ancestors, or those whose estate they had in certain lands, which wholly depended upon such usage, both as to its extent, and the manner in which it was to be exercised. 2 *Haw.* 33.

Thus it is said, that a mayor of a corporation may be a conservator of the peace by prescription. *Crom.* 6.

It is questioned indeed by some, whether any such power can be claimed by usage; yet if the power of holding pleas and even of courts of record, which are of so high a nature, and imply a power of keeping the peace within their own precincts, may be claimed by usage, as it seems to be certain that they may; it seemeth that the bare authority of keeping the peace in a certain district may as well be claimed by such usage. 2 *Haw.* 34.

Power of conservators.

5. The authority which such conservators of the peace, whether by election, or tenure, or prescription, have at common law, is the same authority which constables of a vill or wapentake have at this day. *Crom.* 6. 2 *Haw.* 34.

Their duty.

6. The general duty of the conservators of the peace by the common law, is to employ their own, and to command the help of others, to arrest and pacify all such who in their presence, and within their jurisdiction and limits, by word or deed, shall go about to break the peace. *Dalt.* c. 1.

And if a conservator of the peace, being required to see the peace kept, shall be negligent therein, he may be indicted and fined. *Dalt.* c. 1.

And if the conservators of the peace have committed or bound over any offenders, they are then to send to, or be present at, the next sessions of the peace, or gaol delivery, there to object against them. *Dalt.* c. 1.

II. Of the commission of justices of the peace.

Justices of the peace at this day are of three sorts; 1. By act of parliament; as the bishop of *Ely* and his successors, and the archbishop of *York*, and bishop of *Durham*, 27 H. 8. c. 24. 2. By charter, or grant made by the king under the great seal; as mayors and the chief officers in divers corporate towns. 3. By commission.

At the first, by the statute of the 1 *Ed.* 3. which is the first statute that ordains the assignment of justices of the peace

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peace by the king's commission, those justices had no other power but only to keep the peace. But the very next year, the form of the commission was enlarged, and continued still further to be enlarged both in that king's reign, and in the reign of almost every other succeeding prince, until the 30th year of the reign of *Q. Elizabeth*, when by the number of the statutes particularly given in charge therein to the justices, many of which nevertheless had been a good while before repealed, and by much vain repetition, and other corruptions that had crept into it, partly by the miswriting of clerks, and partly by the untoward huddling of things together, it was become so cumbersome and foully blemished, that of necessity it ought to be redressed. Which imperfections being made known to *Sir Chr. Wrey*, then Lord Ch. Justice of the king's bench, he communicated the same with the other judges and barons, so as by a general conference had amongst them, the commission was carefully refined in the *Michaelmas* term 1590, and being then also presented to the lord chancellor, he accepted thereof, and commanded the same to be used: Which continues with very little alteration to this day. *Lamb.*
c. 9.

Which is as follows :

George the third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, and so forth.
To A. B. C. D. &c. greeting.

Know ye that we have assigned you, jointly and severally and every one of you our justices to keep our peace in our county of W. And to keep and cause to be kept all ordinances and statutes for the good of the peace, and for preservation of the same, and for the quiet rule and government of our people made, in all and singular their articles in our said county (as well within liberties as without) according to the force, form, and effect of the same; And to chastise and punish all persons that offend against the form of those ordinances or statutes, or any one of them, in the aforesaid county, as it ought to be done according to the form of those ordinances and statutes; And to cause to come before you, or any of you, all those who to any one or more of our people concerning their bodies or the firing of their houses have used threats, to find sufficient security for the peace, or their good behaviour, towards us and our people; and if they shall refuse to find such security, then them in our prisons until they shall find such security to cause to be safely kept.

We have also assigned you, and every two or more of you (of whom any one of you the aforesaid A. B. C. D. &c. we

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will shall be one) our justices to inquire the truth more fully, by the oath of good and lawful men of the aforesaid county, by whom the truth of the matter shall be the better known, of all and all manner of felonies, poisonings, enchantments, sorceries, arts magick, trespasses, forestallings, regratings, ingrossings, and extortions whatsoever; and of all and singular other crimes and offences, of which the justices of our peace may or ought lawfully to inquire, by whomsoever and after what manner soever in the said county done or perpetrated, or which shall happen to be there done or attempted; And also of all those who in the aforesaid county in companies against our peace, in disturbance of our people, with armed force have gone or rode, or hereafter shall presume to go or ride; And also of all those who have there lain in wait, or hereafter shall presume to lie in wait, to maim or cut or kill our people; And also of all victuallers, and all and singular other persons, who in the abuse of weights or measures, or in selling victuals, against the form of the ordinances and statutes, or any one of them therefore made, for the common benefit of England, and our people thereof, have offended or attempted, or hereafter shall presume in the said county to offend or attempt; And also of all sheriffs, bailiffs, stewards, constables, keepers of gaols, and other officers, who in the execution of their offices about the premisses, or any of them, have unduly behaved themselves, or hereafter shall presume to behave themselves unduly, or have been, or shall happen hereafter to be careless, remiss, or negligent in our aforesaid county; And of all and singular articles and circumstances, and all other things whatsoever, that concern the premisses or any of them, by whomsoever, and after what manner soever, in our aforesaid county done or perpetrated, or which hereafter shall there happen to be done or attempted in what manner soever; And to inspect all indictments whatsoever so before you or any of you taken or to be taken, or before others late our justices of the peace in the aforesaid county made or taken, and not yet determined; and to make and continue processes thereupon, against all and singular the persons so indicted, or who before you hereafter shall happen to be indicted; until they can be taken, surrender themselves, or be outlawed: And to hear and determine all and singular the felonies, poisonings, enchantments, sorceries, arts magick, trespasses, forestallings, regratings, ingrossings, extortions, unlawful assemblies, indictments aforesaid, and all and singular other the premisses, according to the laws and statutes of England, as in the like case it has been accustomed, or ought to be done; And the same offenders, and every of them for their offences, by fines, ransoms, amerciaments, forfeitures, and other means as according to the law
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and custom of England, or form of the ordinances and statutes aforesaid, it has been accustomed, or ought to be done, to chastise and punish.

Provided always, that if a case of difficulty, upon the determination of any the premisses, before you, or any two or more of you, shall happen to arise; then let judgment in nowise be given thereon, before you, or any two or more of you, unless in the presence of one of our justices of the one or other bench, or of one of our justices appointed to hold the assizes in the aforesaid county.

And therefore we command you and every of you, that to keeping the peace, ordinances, statutes, and all and singular other the premisses, you diligently apply yourselves; and that at certain days and places, which you, or any such two or more of you as is aforesaid shall appoint for these purposes, into the premisses ye make inquiries; and all and singular the premisses hear and determine, and perform and fulfil them in the aforesaid form, doing therein what to justice appertains, according to the law and custom of England: Saving to us the amerciaments, and other things to us therefrom belonging.

And we command by the tenor of these presents our sheriff of W. that at certain days and places, which you, or any such two or more of you as is aforesaid, shall make known to him, he cause to come before you, or such two or more of you as aforesaid, so many and such good and lawful men of his bailiwick (as well within liberties as without) by whom the truth of the matter in the premisses shall be the better known and inquired into.

Lastly, we have assigned you the aforesaid A. B. keeper of the rolls of our peace in our said county. And therefore you shall cause to be brought before you and your said fellows, at the days and places aforesaid, the writs, precepts, processes, and indictments aforesaid, that they may be inspected, and by a due course determined as is aforesaid.

In witness whereof we have caused these our letters to be made patent. Witness ourself at Westminster, &c.

George the third, &c.] This manner of issuing the commission in the king's name, seems to be founded on the statute of the 27 H. 8. c. 24. which enacts, that all justices of the peace shall be made by letters patent under the king's great seal, in the name and by authority of the king; but reserves to all cities and towns corporate which have justices the liberties which they have enjoyed in that behalf.

To A. B. C. D. &c. greeting] From the persons here named in the commission, it may be proper to consider, who may, or may not, be justices of the peace.

By

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By the statutes of 13 R. 2. c. 7. and 2 H. 5. ff. 2. c. 1. The justices shall be made within the counties of the most sufficient knights, esquires, and gentlemen of the law :

And by the 18 G. 2. c. 20. it is enacted as follows: *viz.* No person shall be capable of being or acting as a justice of the peace, who shall not have in law or equity, for his own use, in possession, a freehold, copyhold, or customary estate for life, or for some greater estate, or an estate for some long term of years, determinable upon one or more lives, or for a certain term originally created for 21 years or more, in lands, tenements, or hereditaments, in *England or Wales*, of the clear yearly value of 100 l. above what will discharge all incumbrances affecting the same, and all rents and charges payable out of the same; or who shall not be intitled to the immediate reversion or remainder of lands leased for one, two, or three lives, or for any term of years determinable on the death of one, two, or three lives, upon reserved rents of the clear yearly value of 300 l.

And who shall not before he acts, at the sessions of the county where he intends to act, take and subscribe the oath following; *I A. B. do swear, that I truly and bona fide have such an estate, in law or equity, to and for my own use and benefit, consisting of—*(specifying the nature of such estate, whether messuage, land, rent, tythe, office, benefice, or what else) *as doth qualify me to act as a justice of the peace for the county, riding, or division of—, according to the true intent and meaning of an act of parliament made in the 18th year of the reign of his majesty king George the second, intituled, An act to amend and render more effectual an act passed in the fifth year of his present majesty's reign, intituled, An act for the further qualification of justices of the peace; and that the same (except where it consists of an office, benefice, or ecclesiastical preferment, which it shall be sufficient to ascertain by their known and usual names) is lying or being, or issuing out of lands, tenements, or hereditaments, being within the parish, township, or precincts of— or in the several parishes, townships, or precincts of—, in the county of—, or in the several counties of—*(as the case may be.)

Which oath taken and subscribed, shall be kept by the clerk of the peace among the records of the sessions.

And the clerk of the peace shall on demand forthwith deliver an attested copy to any person, paying 2 s. for the same; which being proved to be a true copy of such oath, shall be admitted in evidence on any issue in an action brought on this act.

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And if any person shall act as justice, without having taken and subscribed the said oath, or without being qualified as above, he shall for every offence forfeit 100 l. half to the poor of the parish in which he most usually resides, and half to him who shall sue, with full costs. The prosecution to be in six months.

And in such action, the proof of the qualification shall lie on the person against whom it is brought.

And if the defendant intends to insist on any lands not contained in such oath, he shall at or before the time of pleading deliver to the plaintiff or his attorney a notice in writing specifying such lands, and the parish and county where they are situate (Offices and benefices excepted, which it shall be sufficient to ascertain by their usual names :) And if the plaintiff in such suit shall think fit thereon not to proceed further, he may with leave of the court discontinue such suit, on payment of costs to the defendant as the court shall award.

And upon trial no estate, but what is contained in the oath and notice, shall be admitted as any part of the qualification.

Provided, that where the qualification or any part thereof consists of rent, it shall be sufficient to specify in such oath or notice, so much of the lands, out of which such rent is issuing, as shall be of sufficient value to answer such rent.

And if the plaintiff or informer shall discontinue (otherwise than as aforesaid) or be nonsuit, or judgment be given against him, he shall pay treble costs.

But this shall not extend to any city, town, or liberty, having justices of their own ; nor to any peer, lord of the privy council, judge, attorney or solicitor general, or to the justices of the great sessions for *Cheshire* and *Wales*, or to the eldest son or heir apparent of a peer, or of any person qualified to serve as a knight of a shire.

Nor to the officers of the board of green cloth, or principal officers of the navy, or the two under secretaries in each of the offices of the principal secretary of state, or the secretary of *Chelsea* college, in their respective liberties ; nor to the heads of colleges or halls, or vicechancellor, of either of the universities, or to the mayor of *Oxford* or *Cambridge*.

And by the 1 G. 3. c. 13. and 7 G. 3. c. 9. All persons who were justices at the demise of his late majesty, or who have been or shall be appointed justices by any commission granted or to be granted by his present majesty

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jeſty or any of his ſucceſſors, and have taken and ſubſcribed, or ſhall after the iſſuing of the firſt commiſſion whereby they ſhall be appointed juſtices have taken and ſubſcribed the oath of office before the clerk of the peace or his deputy, and alſo the oath aforeſaid required by the 18 G. 2. c. 20. ſhall not be obliged during the reign of his preſent majeſty, or during any future reign in which ſuch oaths ſhall have been ſo taken and ſubſcribed, to take and ſubſcribe the ſame again. And generally there is an indemnifying claufe in ſome act in almoſt every ſeſſion of parliament, provided they qualify as aforeſaid according to the 18 G. 2. c. 20. within a time in ſuch act limited.

By the 1 M. ſeſſ. 2. c. 8. No ſheriff ſhall exerciſe the office of a juſtice of the peace, during the time that he acts as ſheriff. And the reaſon ſeems to be, becauſe he cannot act at the ſame time both as judge and officer, for ſo he would command himſelf to execute his own precepts. *Dalt. c. 3.*

Alſo if he be made a *coroner*, this by ſome opinions is a diſcharge of his authority of juſtice. *Dalt. c. 3.*

But if he be created duke, archbiſhop, marquis, earl, viſcount, baron, biſhop, knight, judge, or ſerjeant at law, this taketh not away his authority of a juſtice of the peace. 1 Ed. 6. c. 7. *Dalt. c. 3.*

Alſo, no *attorney*, ſolicitor, or proctor, ſhall be a juſtice of the peace, during the time he ſhall continue in the practice of that buſineſs. 5 G. 2. c. 18. ſ. 2.

By *Holt Ch. J.* Though a man be a *mayor*, it doth not follow that he is a juſtice of the peace, for that muſt be by a particular grant in the charter. *L. Raym. 1030.* But although he be not a juſtice of the peace by the charter, yet there are many caſes, wherein he hath the ſame power as a juſtice of the peace given unto him by particular ſtatutes; as for inſtance, with regard to the cuſtoms, ale-houſes, lord's day, ſwearing, gaming, weights, ſervants. fuel, leather, orchards, ſoldiers, and divers others.

Know ye that we have aſſigned you] This is founded on the ſtatute of the 1 Ed. 3. c. 16. viz. For the better keeping and maintenance of the peace, the king will, that in every county, good men and lawful, which be no maintainers of evil, or barretors in the country, ſhall be aſſigned to keep the peace.

And from this act we are to date that great alteration in our conſtitution, whereby the election of conſervators of

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the peace was taken from the people, and translated to the assignment of the king. *Lamb. 20.*

And here we may observe, that the commission hath two parts; or consisteth of two different assignments: By this first assignment, any one or more justices have as well the ancient power touching the peace, which the conservators of the peace had at the common law, as also that whole authority which the statutes have since added thereto. *Dalt. c. 5.*

Jointly and severally, and every one of you] Whatsoever any one justice alone may do, the same also may lawfully be done by any two or more justices; but where the law giveth authority to two, there one alone cannot execute it. *Dalt. c. 6.*

And yet where a statute appointeth a thing to be done by two justices or more, if the offence be any misdemeanor or matter against the peace, there upon complaint made of the offence, to any of those justices, it seemeth that one of them may grant out his warrant to attach the offender, and to bring him before the same justice and the other justice so appointed (at some convenient place), and then they to hear and determine the same. *Dalt. c. 6.*

But it seemeth, that when a thing is appointed by any statute to be done by or before one person certain, such thing cannot be done by or before any other: and by such express designation of one, all others are excluded, and their proceedings therein are *coram non iudice*. *Dalt. c. 6.*

Our justices] In that the king calls them *our* justices, their authority determines of course by his death or demise, so that he being once dead, or having given over his crown, they are no more his justices, and the justices of the next prince they cannot be, unless it shall please him afterwards so to make them. *Dalt. c. 3.*

But by the 1 *An. st. 1. c. 8. f. 2.* No patent or grant of any office or employment shall determine by the king's death or demise, but shall continue in force for six months after, unless in the mean time made void by the successor.

Also, before his death or demise, the king may determine the commission at his pleasure; and that either expressed, as by writ under the great seal, or by implication, by making a new commission, and leaving out the former justices names. But until notice, or publishing of the new commission, the acts of the former justices are good in law. *Dalt. c. 3.*

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But to mayors and chief officers in corporations, which have the authority of justices of the peace, or of conservators of the peace, by grant under the king's letters patent to them and their successors, the authority remaineth, notwithstanding the king's death or demise. *Dalt. c. 3.*

Neither can the king discharge these again at his pleasure: but yet such grants and charters may for some great and general defect, or miscarriage, in the execution of the powers therein granted, be repealed, and the liberties seized. *Dalt. c. 3.*

Justices to keep our peace] Although they are in no part of the commission called *keepers of the peace*, yet inasmuch as by the 18 *Ed. 3. c. 2.* they are expressly called *keepers of the peace*, and the principal end of their office is for the keeping of the peace, and their usual description in certioraries is by the name of *keepers of the peace*; it hath been adjudged, that in the caption of an indictment, *keepers of the peace and justices of our lord the king*, is good, without expressly naming them *justices of the peace*. 2 *Haw. 38.*

To keep our peace] These words seem to give them the authority which the conservators of the peace had at common law: and all that follows in the commission, seems an addition to the power of the ancient conservators.

Our peace] It hath been resolved, that the description of justices of the peace, by the name of *justices of our lord the king to keep the peace*, is good, without saying, *the peace of our lord the king*; for that is necessarily implied. 2 *Haw. 38.*

Also, by these words *our peace*, when the king dies, the surety of the peace is discharged; for when he is dead, it is not his peace. *Crom. 124.*

In our county of W.] Here are two considerations; One is, that the justice cannot act when he is out of the county: And the other is, that when he is in the county, he can act for that county only, and his power extendeth to no other. But both these are to be understood with some limitations.

As to the former case, when he is out of the county; It is said, that the justices have no *coercive* power when out of the county; and therefore, that an order of bastardy, or for payment of labourers wages, made by them out of the county, is not binding. Yet it is said, that *recognizances* and *informations* voluntarily taken before them in any place, are good. 2 *Haw. 37.*

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And L. Hale says, that a justice of the peace may do a ministerial act out of his county, as examining a party robbed whether he knows the felons; but that he cannot do a compulsory act, as committing a person for not giving recognizance. 2 H. H. 50, 51.

Also, by the 9 G. c. 7. A justice dwelling in a city or precinct that is a county of itself, within the county at large, may act at his own dwelling house for such county at large.

And as to the latter case, wherein it is supposed that his power is limited unto that county only,—it is enacted by the 24 G. 2. c. 55. that if any person against whom a warrant shall be issued, shall escape, go into, reside, or be in any place out of the jurisdiction of the justice granting the warrant, either before or after the issuing thereof; any justice for the county or place, where such person shall so escape or be, upon proof on oath, of the hand writing of the justice granting such warrant, shall indorse his name thereon; which shall be a sufficient authority to the person bringing such warrant, and to all other persons to whom the same was originally directed, to execute the same in such other county or place, and to carry the offender before the justice who indorsed the warrant, or some other justice or justices of that county, if the offence be bailable, and the offender be ready to give bail for his appearance at the next assizes or sessions for the county or place where the offence was committed; and such justice or justices shall take bail accordingly, and shall deliver the recognizance together with the examination or confession of the offender, and all other proceedings relating thereto, to the constable or other person, who shall (on pain of 10l. to him who shall sue) deliver over the same to the clerk of assize, or clerk of the peace, where the offender is required to appear. And if the offence is not bailable, or he shall not give bail to the satisfaction of the justice before whom he is brought, the constable or other person shall carry the offender before a justice of the proper county or place, where the offence was committed, there to be dealt with according to law.

The form of which indorsement may be thus:

Westmorland. **F**ORASMUCH as proof upon oath hath been made before me J. P. esquire, one of his majesty's justices of the peace for the said county of Westmorland, that the name A. B. is of the hand writing of the justice

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Justice of the peace within mentioned: I do hereby authorize A. C. who bringeth unto me this warrant, and all other persons to whom the said warrant is directed to execute the same within the said county of Westmorland. Given under my hand, the—— day of—— in the year——

And the justice may further order (if he thinks fit) the party, according as he shall appear bailable or not bailable upon the face of the warrant, to be brought before himself or some other justice or justices of that county, or to be carried back into the county from whence the warrant did issue.

And to keep and cause to be kept all ordinances and statutes for the good of the peace] It seems certain, that by virtue hereof, they may execute all statutes whatsoever, made for the better keeping of the peace, and consequently those of *Winchester* and *Westminster*, and all others concerning the peace, made before the reign of *Ed. 3.* in whose time (as hath been said) justices of the peace were first instituted; for all those statutes were expressly mentioned in the ancient commissions of the peace, and have always been undoubtedly taken to be included in these general words of the present commission. And yet none of the statutes which ordain the office of justices of the peace, say any thing concerning the execution of the said former statutes; so that the power of justices of the peace in relation to those statutes seems entirely to depend on the king's commission, and yet hath always been unquestionably allowed. From whence it appears, that regularly the king, by his commission, may authorize whom he pleases to execute an act of parliament. *2 Haw. 37.*

But if no power be expressly given in any such statute to any one justice alone, he cannot proceed upon it, but he may prefer the cause at the sessions, and work it to a presentment upon the statute. *Dalt. c. 5.*

But besides the statutes relating to the peace, there are also many other statutes which are not specified in the commission, and yet are committed to the charge and care of the justices of the peace, by the express words of such statutes; and all such statutes are to them a sufficient warrant and commission of themselves, altho' they be not recited in the commission, and are to be executed by them, according as the same statutes themselves do severally prescribe and set down. *Dalt. c. 5.*

Statutes for the good of the peace] Although a præmunire is not within the letter of the commission, yet inasmuch as it

it is against the peace of the king and of the realm, any justice may cause a person to be apprehended for such offence, and take his examination, and informations against him, and certify the same to the king's bench or gaol delivery. 2 *Haw.* 39. And the same may be said of other like offences.

And for the quiet government of our people] Of our people;—yet it seemeth, that the subjects of a foreign prince coming into *England*, and living under the protection of our king, shall be subject to and have the benefit of the laws, in respect of the local allegiance which they owe to him. 2 *Haw.* 35. 1 *H. H.* 93, 94.

As well within liberties as without] By these words shall be intended such liberties and franchises which have return of writs, and not such as are counties of themselves, as *London, Norwich, York*, and such like. *Crom.* 8.

But yet from hence it seems clearly to follow, that they may execute their office within a town (not being a county of itself) altho' it have a special commission of the peace for its own limits, unless such commission have a clause, that no other justices except those named in it, shall any way concern themselves in the keeping of the peace within the liberties of such town: And it may be questioned, whether such a special clause in such a commission do absolutely make void the act of any county justice within such town; since the commission for the county seems as fully to give those named in it a jurisdiction over all such towns within the precincts of it, as such commission for a town doth exclude them. And the justices for the county seem to be under no necessity of informing themselves of the contents of a commission, which they have nothing to do with. Yet if they have express notice given them of such a restraining clause, and proceed to act within such town in defiance of it, they may perhaps be punishable for their contempt of the king's prohibition; and yet perhaps it may be questioned whether their acts be void, for the reasons abovementioned. 2 *Haw.* 37.

And lord *Hale* treating on the same subject, says, if the king by charter grant to a corporation, that the mayor, and recorder, or other, shall be justices within the same, yet if there be no words of exclusion, the justices of the county have a concurrent jurisdiction: But if this franchise of being justices be granted, *so that the justices of the county shall not intermeddle (se non intromittant)*; then tho' a subsequent commission be granted in the county at large,

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it seems they have no jurisdiction in this corporation or town; yet it is questionable, whether an indictment in the franchise be void, or only a contempt in the justices. 2 *H. H.* 47.

But in the case of *Talbot and Hubble*, *T.* 14 *G.* 2. The question was, whether as the city of *New Sarum* had an exclusive commission of the peace, the justices of the county of *Wilts* could by virtue of the 12 *C.* 2. c. 23. & 15 *C.* 2. c. 2. act in excise matters within the city. This case was argued three times at the bar, and this term *Lee Ch. J.* delivered the resolution of the court: 1. That the crown might grant to any city, to have justices of their own within themselves, and exclude the county justices from intermeddling in the ordinary business of a justice of the peace. 2. That in such case, the act of the county justices would be void, and not to be considered only as a breach of the franchise. 3. That tho' the 12 *C.* 2. gives the jurisdiction in excise matters to the justices of the peace residing near the place where the forfeiture shall be made, or offence committed; yet it never was the design of the legislature, to make any alteration in the respective jurisdictions of the justices, but only to vest the excise jurisdiction of justices of counties, cities, and places, with respect to their several local jurisdictions within such places. *Str.* 1154.

Concerning their bodies] *Lambard* and *Dalton* both think it seems clear, that if a man is in fear that another will hurt his *servants*, or cattle, or other *goods*, the surety of the peace shall not be granted; but *Mr. Dalton* is of opinion, that if one threatens to hurt a man's *wife*, or *child*, he may crave the peace by virtue of these words. *Lamb* 82. *Dalt. c.* 116.

Have used threats] It should seem from the many causes which from time to time have been adjudged sufficient to bind to the good behaviour, that this expression is not to be understood of *words* only, but of threatening *actions* likewise, or any thing whereby a man has just cause to apprehend the burning of his houses, or some bodily hurt to be done to him.

To find sufficient security] This is done by recognizance; by a reasonable intendment of law, more than by any especial law in that case provided. *Crom.* 125.

For the peace of their good behaviour] *Lord Hale* speaking of the statute of the 34 *Ed.* 3. c. 1. (on which *Mr. Crompton*

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Crompton says the power of justices to bind to the good behaviour is grounded) says, that this power of binding, tho' expressed generally, and without any time limited, yet is not intended to be perpetual, but in nature of bail, viz. to appear at such a day at their sessions, and in the mean time to be of good behaviour. 2 *H. H.* 136.

In our prison] The king's prison is the common gaol of the county: But by the statute of the 6 *G. c.* 19. the justices may commit vagrants and other criminals, and persons charged with small offences, either to the gaol, or to the house of correction, by their discretion, for such offences, or for want of sureties.

We have also assigned you and every two or more of you] Here beginneth the second part of the commission, or the second assignment: All the business within which assignment belongeth to the sessions of the peace. *Dalt. c.* 5.

And by this it appeareth, that two justices may hold a session, but that one justice cannot. *Crom.* 6, 7.

Of whom any one of you the aforesaid A. B. C. D. &c. we will shall be one] This clause which gives power to two or more justices to hear and determine offences, requires that at least one of those justices be of that select number, which is commonly termed of the *Quorum* (from that word in the *Latin* commissions, *Quorum—unum esse volumus.*) For those of the *quorum* were wont to be chosen specially for their knowledge in the laws: And this was it which led the makers of several ancient statutes expressly to enact, that some learned in the laws should be put into the commission of the peace; and (to say the truth) all statutes that require the presence of the *quorum*, do tacitly signify such a learned man. For albeit that a discreet person (not conversant in the study of the laws) may sufficiently follow sundry particular directions concerning the service of the peace; yet when the proceeding must be by way of presentment or indictment, upon the evidence of witnesses, and oaths of jurors, and by the order of hearing and determining, according to the straight rule and course of the law, it must be confessed that learning in the laws is very necessary. *Lamb.* 48, 49.

But learning being now greatly advanced and improved since the first institution of this office, this distinction is not of much use, but all or most of the justices are now equally assigned to be of the *quorum*; and by the statute of 26 *G. 2. c.* 27. no act, order, adjudication, warrant, in-

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indenture of apprenticeship, or other instrument done or executed by two or more justices, which doth not express that one or more of them is of the *quorum*, (altho' the statutes respectively do require it) shall be impeached, set aside, or vacated, for that defect only.

And by the 7 G. 3. c. 21. In cities, boroughs, towns corporate, franchises, and liberties, which have only one justice of the *quorum*; all acts, orders, adjudications, warrants, indentures of apprenticeship, or other instruments, done or executed by two or more justices qualified to act therein, shall be valid, altho' neither of the said justices shall be of the *quorum*.

By the oath of good and lawful men] That is, by a jury sworn.

Of all and all manner of felonies] That is, either by the common law, or by statute. *Crom. 8.*

Felonies] Tho' the commission doth not mention *murders* and *manslaughters*, by express name, but only felonies generally, yet by these general words, they have power to hear and determine murder and manslaughter, and also may take an indictment of *se defendendo*, contrary to the opinions of *Fitzherbert* and *Stamford*. But tho' the justices have this power, yet they do not ordinarily proceed to hear and determine these offences, and rarely other offences without clergy, both because of the monition and clause in their commission, in case of difficulty to expect the presence of the justices of assize; and also because of the direction of the statute of the 1 & 2 P. & M. c. 13. which directs justices of the peace, in case of manslaughter and other felonies, to take the examination of the prisoner, and the information of the fact, and put the same in writing; and then to bail the prisoner, if there be cause, and to certify the same with the bail at the next gaol delivery: And therefore in cases of great moment, they bind over the prosecutors, and bail the party if bailable, to the next gaol delivery; but in smaller matters, as petit larceny, and some cases within clergy, they bind over to the sessions. But this is only in point of discretion and convenience not because they have not jurisdiction of the crime. 2 H. H. 46.

So also, an inquisition of *self-murder*, if the body cannot be seen, and so not inquired of by the coroner, may be taken before justices of the peace; for it is a felony,
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and within the extent of their commission. 1 H. H. 414.

So also, if a person hath committed *treason*, tho' the justices have no cognizance of it as treason, yet they have cognizance of it as a felony, and as a breach of the peace; and therefore a justice of the peace, upon information on oath, may issue his warrant to take the traytor, and may take his examination, and commit him to prison. 1 H. H. 580.

Poisoning] The words in the Latin commissions was *veneficia*; and before the statute of the 9 G. 2. c. 5. which abolisheth witchcraft, was in the *English* translations rendered witchcrafts.

Inchantments, forceries, arts magick] These also are abolished by the said statute, which enacts, that no prosecution shall thereafter be commenced against any person, for witchcraft, forcery, enchantment, or conjuration.

And from the words continuing in the commission, when the crime itself is abolished, we may observe the averfeness in the superior courts from altering ancient forms.

Trespasses] This is founded on the statute of the 34 Ed. 3. c. 1. which enacts, that the justices assigned shall have power to restrain the offenders, rioters, and all other barators, und to chastise them according to their trespasss or offence.

And upon this Mr. *Hawkins* observes, that the word *trespass* is of a very general extent, and in a large sense not only comprehends all inferior offences, which are properly and directly against the peace, as assaults and batteries, and such like, but also all others which are so only by construction; as all breaches of the law in general are said to be. Yet it hath been of late settled, that justices of the peace have no jurisdiction over forgery or perjury at the common law; the principal reason of which resolution, he says, as he apprehended was, that inasmuch as the chief end of the institution of the office of these justices was, for the preservation of the peace against personal wrongs, and open violence; and the word *trespass* in its most proper and natural sense, is taken for such kind of injuries, it shall be understood in that sense only in the said statute and commission, or at the most to extend to such other offences only as have a di-

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rect and immediate tendency to cause such breaches of the peace, as libels, and such like, which on this account have been adjudged indictable before justices of the peace. 2 Haw. 40.

The word for trespasses in the old Latin commissions, is *transgressiones*.

FareSTALLINGS, regratings, ingrossings] Over these offences the justices in sessions have a jurisdiction given to them, by the statute of the 5 & 6 Ed. 6. c. 14.

Extortions] The intent of this word is, to inquire of those who have done excessive wrongs; for wrong done by any one is properly trespass, but excessive wrong done by any one is called extortion; and this is more properly in officers, as sheriffs, mayors, bailiffs, escheators, and other officers whatsoever (as well spiritual as temporal) who by colour of their office have done great oppression and excessive wrong to the king's subjects, in taking excessive rewards or fees for doing their offices. *Crom. 8.*

The justices have no express power given them over this offence by any statute; upon which Mr. *Hawkins* observes, that justices of the peace have jurisdiction of all inferior crimes within their commission, whether such crimes be mentioned in any statute concerning them or not; for that all such crimes are either directly or at least by consequence and judgment of law, against the peace: And, upon this ground principally, he says, as he apprehended, it was lately resolved, that they may take an indictment of *extortion*. 2 Haw. 40.

And of all and singular other crimes and offences of which the justices of our peace may or ought lawfully to inquire] Which general words seem to include the vast number of offences over which they have a jurisdiction given them by many statutes, and which are not particularly mentioned in the commission.

And also of all those who in companies against our peace in disturbance of our people with armed force have gone or rode] By these words they are to inquire of riots, routs, and all unlawful assemblies. *Crom. 8.*

Weights or measures] This clause was first established by the 34 Ed. 3. c. 5. And they have further power given herein by several subsequent statutes, all which statutes must be strictly pursued in relation to the several offences.

Selling victuals] Over this they have a jurisdiction given them, by the 2 & 3 Ed. 6. c. 15. intituled, *The bill of conspiracies of victuallers and craftsmen.* And

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And also of all sheriffs, bailiffs, stewards, constables, keepers of gaols, and other officers, who in the execution of their offices have unduly behaved themselves] This clause is as ancient as the 4 Ed. 3. c. 2. on which it is founded.

And it hath been suffered to remain in the commission, not as of any necessity at all (since it is incident to every court of record to do correction upon whatsoever officers and ministers do serve them), but only for the plainer declaration of the power of these justices in that behalf, and for the more assured terrifying of such as shall either of contempt or negligence, do that which is amiss. *Lamb. 49.*

And to inspect all indictments so before you taken] But they cannot proceed upon indictments taken before coroners, or justices of oyer and terminer or gaol delivery; but on indictments taken before the sheriff in his turn they may proceed. *Hale's Pl. 168.*

Or before other late our justices] This is founded on the statute 11 H. 6. c. 6. which enacts, that no indictment, plea, suit or process shall be discontinued by a new commission; but the justices in the new commission, after they shall have the records of the same pleas and processes before them, shall have power to continue the said pleas and processes, and to hear and finally to determine the same, as the former justices might have done.

And to make and continue processes] This is by *venire, distringas, capias, or exigent*, as the case shall be. And it differs from a warrant, in that a warrant is only to attach and convene the party before indictment, and may be either in the name of the king or of the justice; but the process issues after indictment, and must be in the name of the king only. *Dalt. c. 193.*

Until they can be taken, surrender themselves, or be outlawed] For the process is sent out to this end, that either the party shall come in, to answer and to be justified by the law; or else that he shall for his contumacy be deprived of the benefit of the law. *Lamb. 521.*

Or be outlawed] It is observable that the power of the justices stops here, and goes no further; so that they cannot make out a *capias utlagatum*, but the outlawry must be certified into the king's bench. *Lamb. 521. 2 H. 52.*

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But by the 12 Co. 103. they that have power to award process of outlawry, have also a power to award a *capias utlagatum*, as incident to their authority and jurisdiction.

Hear and determine] This power was first given to them by the statute of the 18 Ed. 3. *st. 2. c. 2.* and afterwards confirmed and enlarged by divers other statutes.

Yet this clause doth not in propriety make the justices of the peace justices of oyer and terminer, because that is a distinct commission; and therefore a statute limiting an offence to be heard and determined before justices of oyer and terminer, gives not the power therein to justices of the peace. *Hale's Pl. 165.*

And thereupon it is said, that although they have power to hear and determine felonies, yet they cannot deliver a person suspected thereof by proclamation (as justices of gaol delivery may) until an inquisition taken; but if an inquisition be taken, and an *ignoramus* found, they may deliver him as it seemeth. 2 H. H. 46, 47.

Likewise, although commissioners of oyer and terminer may indict and try at the same sessions, yet it hath been ruled otherwise in case of justices of the peace, unless by consent; but certainly constant usage and learned opinion must give that exposition upon those resolutions, that it must extend only to popular actions or indictments for misdemeanors, and not in cases of felony. 2 H. H. 48.

By fines, ransoms, amerciaments, forfeitures, and other means—to chastise and punish] Hereby the justices are now armed with far more ample authority and power, than the ancient conservators of the peace were; for they had no power to convene the offender before them, nor to examine, hear, or determine the cause, nor to punish except in some few cases as mentioned before. *Dalt. c. 6.*

But the justices may not award any recompence to the party wronged, otherwise than by persuasion. *Dalt. c. 5.*

Nevertheless, these words are inserted, not as of necessity (for the punishment of all offenders is implied in the word *determine*), but for the plainer declaration of the justices power, and for the more assured terrifying of offenders. *Lamb. 49.*

If a case of difficulty shall happen to arise] That is a difficulty in point of law. *Crom. 6.*

Then let judgment in nowise be given] But yet if they list to proceed without the judge's advice, their judgment is not void; but it standeth good and effectual, until it be reversed by a superior court. *Lamb. 50.*

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At certain days and places] That is, when they hold their sessions; which they are empowered and required to do by several statutes.

Lastly, we have assigned you the aforesaid A. B. keeper of the rolls] This is in pursuance of the statute of the 37 H. 8. c. 1. which enacts, that the lord chancellor shall by commission assign such person to be *custos rotulorum* as the king shall by writing under his hand appoint.

III. The justice of the peace his oath of office.

On renewing the commission of the peace (which generally happeneth as any person is newly brought into the same) there cometh a writ of *dedimus potestatem* directed out of chancery, to some ancient justice (or other) to take the oath of him which is newly inserted, which is usually in a schedule annexed; and to certify the same into that court, at such a day as the writ commandeth. *Lamb. 53.*

And such as have once taken the oaths under a writ of *dedimus potestatem*, shall not be obliged, upon the issuing of a new commission, to sue out or have any other *dedimus potestatem*, from the clerk of the crown; but the clerk of the peace or his deputy, shall on such new commission being issued, prepare a parchment roll, with the oaths annexed to and usually taken under the said writ of *dedimus potestatem* ingrossed on such roll, and shall administer without fee to such justices the oaths in such roll specified; which justices having taken the said oaths shall subscribe their names on the said parchment roll: and the said roll shall be kept amongst the records of the sessions. 1 G. 3. c. 13. s. 2.

The form of which oath of office at this day is as followeth:

Ye shall swear, that as justice of the peace in the county of W. in all articles in the king's commission to you directed, you shall do equal right to the poor and to the rich, after your cunning, wit, and power, and after the laws and customs of the realm, and statutes thereof made: And ye shall not be of counsel of any quarrel hanging before you: And that ye hold your sessions after the form of the statutes thereof made: And the issues, fines, and amerciaments that shall happen to be made, and all forfeitures which shall fall before you, ye shall cause to be entred without any concealment (or embezzilling) and truly send them to the king's exchequer. Ye shall not let, for gift or other cause, but well and truly ye shall do your office of justice
of

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of the poace in that behalf: And that you take nothing for your office of justice of the peace to be done, but of the king, and fees accustomed, and costs limited by statute. And ye shall not direct, nor cause to be directed, any warrant (by you to be made) to the parties, but ye shall direct them to the bailiffs of the said county, or other the king's officers or ministers, or other indifferent persons, to do execution thereof. So help you God.

This oath seems to be founded on the statute of the 13 R. 2. c. 7. which enacts, that the justices shall be sworn duly and without favour, to keep and put in execution all the statutes and ordinances touching their offices.

Besides this oath of office, he is likewise to take the oath mentioned in the foregoing section concerning his qualification by estate: and he must, within six months after, take also the oaths of allegiance, supremacy, and abjuration, and make and subscribe the declaration against transubstantiation, at the sessions, as other persons admitted to offices.

IV. Of fees to be taken by justices of the peace.

In the oath of office abovementioned are these words; *And that you take nothing for your office of justice of the peace to be done, but of the king, and fees accustomed, and costs limited by statute.*

And by statute their fees in many cases are limited and ascertained; as is noted under their respective titles where they fall in throughout this book.

And for the rest, it is provided generally by the statute of the 26 G. 2. c. 14. That the justices at *Midsummer* sessions 1753, shall settle a table of their clerks fees; which being approved by the justices at the next succeeding sessions, with such alterations as the justices there shall think proper, shall be laid before the judges at the next assizes, who shall confirm the same with such alterations, additions, or abatements, as to them shall appear just and reasonable: And the sessions from time to time may make any other table of fees, and after the same shall have been approved by the next succeeding sessions, shall lay the same before the judges at the next assizes, who may ratify the same in like manner: and no table of fees shall be valid, until confirmed by the judges. *s. 1.*

And if after three months from the time that such table shall be confirmed, any justice's clerk shall demand or take

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take any other or greater fee than shall have been so confirmed, he shall forfeit 20 l. to him who shall sue in three months. *f. 2, 4.*

And the said table of fees shall be deposited with the clerk of the peace, who shall cause true copies thereof to be kept constantly in a conspicuous part of the room where the sessions are held, on pain of 10 l. *f. 3.*

And by the 27 G. 2. c. 16. In *Middlesex*, the like table shall be confirmed, by the two lords chief justices, and the lord chief baron or any two of them. *f. 4.*

V. Some general directions relating to justices of the peace, not falling under any particular title of this book.

1. Regularly, justices of the peace ought not to execute their office, in their own case; but cause the offenders to be convened or carried before some other justice, or desire the aid of some other justice being present. *Dalt. c. 173.*

By *Holt Ch. J. M. 10 W.* The mayor of *Hereford* was laid by the heels, for sitting in judgment in a cause where he himself was lessor of the plaintiff in ejectment, though he by the charter was sole judge of the court. *1 Salk. 396.*

H. 3 An. The case of *Foxham* tithing in the county of *Wilts.* A justice of the peace was surveyor of the highways, and a matter which concerned his office coming in question at the sessions, he joined in making the order, and his name was put in the caption. But by *Holt Ch. J.* It ought not to be; as if an action be brought by my lord chief justice *Trevor* in the court of common pleas, it must be before *Edward Nevell*, knight, and his associates, and not before *Thomas Trevor, &c.* And it was quashed. *2 Salk. 607.*

M. 16 G. 2. Great Chart and Kennington. An order of removal of a poor person from *Great Chart* to *Kennington* was quashed, because one of the justices who made the order was an inhabitant of *Great Chart* at the time, and charged to the poor rate there. And by the court, no rule of law or reason is more established, than that a judge ought to stand disinterested. *Burrow's Settle. Cas. 194.*

Yet in some cases, if the justice shall act in his own cause, it seemeth to be justifiable; as when a justice shall be

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be assaulted, or (in the doing his office especially) shall be abused to his face, and no other justice present with him; then it seems he may commit such offender until he shall find sureties for the peace or good behaviour, as the case shall require: But if any other justice be present, it were fitting to desire his aid. *Dalt. c. 173. Str. 420, 421.*

And by the 16 G. 2. c. 18. (which seems to have been made in consequence of the determination in the case of *Great Chart* and *Kennington* aforesaid) the justices may do all things appertaining to their office, so far as the same relates to the laws for the relief, maintenance, and settlement of the poor; for passing and punishing vagrants; for repair of the highways; or to any other laws concerning parochial taxes, levies, or rates; notwithstanding that they are rated, or chargeable with the rates within any place affected by such their acts. Provided, that this shall not empower any justice for any county at large, to act in the determination of any appeal to the quarter-sessions of such county, from any order, matter, or thing, relating to any such parish, township, or place, where such justice is so charged or chargeable.

And as it is unjust in many cases for the magistrate to act in his own cause, so it is also imprudent: To which purpose the advice of lord *Coke* is applicable, who upon the occasion of mentioning a certain judge, who made a settlement of his estate which was void in law, and brought an action in his own name, which all the other judges, of his own shewing in the count, were of opinion did not lie, makes this observation, that it is not safe for any man (be he never so learned) to be of counsel with himself in his own cause, but to take advice of other great and learned men; and the reason he gives is, for that men are generally more foolish in their own concerns, than in those of other people. *1 Inst. 377.*

Acting without
authority.

2. If a justice exceed his authority, in granting a warrant, yet the officer must execute it, and is indemnified for so doing; but if it be in a case wherein he hath no jurisdiction, or in a matter whereof he hath no cognizance, the officer ought not to execute such warrant; so that the officer is bound to take notice of the authority and jurisdiction of the justice. *Cro. Car. 394. 10 Co. 76.*

Thus if a justice send a warrant to a constable to take up one for slander, or the like, the justice hath no jurisdiction in such cases, and the constable ought to refuse the execution of it. *Wood. b. 1. c. 7.*

But

But by the 24 G. 2. c. 44. If the officer in six days after demand shall grant to the party complaining a perusal and copy of the warrant, he shall not be liable to any action, but the justice only.

3. T. 2 G. Pancras and Rumbald. There was an order of two justices for the removal of a poor person, from the parish of Pancras to Rumbald. Within three days, the justices reciting that they were surprized, superseded it; and commanded the church-wardens to return the former order to be cancelled. It was insisted, that the justices could not issue such a *superfedeas*. But by the court, The *superfedeas* is well sent by the justices, and to prevent the charge of an appeal. And the last order was confirmed. *Str.* 6.

Whether they may supersede their own proceedings.

4. In the case of the mayor and corporation of York against Sir Lionel Pilkington, May 14, 1742, The plaintiffs claimed the sole right of fishing in the river Ouse, and the defendant claimed a right likewise; and a bill and cross bill were brought in chancery to establish their several rights. Whilst these suits were depending, the plaintiffs caused the agents of the defendant to be indicted at York sessions for a breach of the peace in fishing in their liberty. A motion was made on behalf of the defendant, to stop the prosecution. By the lord chancellor Hardwicke: This court hath not originally and strictly any restraining power over criminal prosecutions; but, in this case, if the defendant had applied to the attorney general he would have granted a *noli prosequi*. If an action of trespass had been brought, this court would have stopped them. But, tho' I cannot grant an injunction, yet as the parties have submitted their right to this court, I can make an order to restrain the parties from proceeding at the sessions, till the hearing of the cause in this court, and till further order. Which order was made accordingly. 2 *Atk.* 302.

Cannot determine in cases of property.

5. In summary convictions, the party ought to be heard, and for that purpose ought to be summoned in fact; and if the justice proceed against a person without summoning him, it would be a misdemeanor in him, for which an information would lie. 1 *Salk.* 181. *L. Raym.* 1407. *Str.* 678.

Not to condemn any person unheard.

But before an information is granted, the court will first require, that the conviction be removed before them. *Str.* 915.

E. 11 G. 2. K. and Harwood. The defendant being a justice of the peace, was convicted on an information, for

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Justices of the peace.

a conviction by him made of an alehouse-keeper, who was never summoned or heard. It was moved, as of course, to dispense with his appearance. This was opposed, unless there was some reason given, or affidavit made. And upon debate the court resolved, it was not of course; and the defendant afterwards appeared in person. *Str.* 1088.

Refusing to proceed in a cause depending before them.

6. *M. 9 G. K.* against *Todd* and others. By the 6 G. c. 21. the justices of the peace have a jurisdiction given them in some cases to receive an information, and make their determination, upon a seizure of brandy. Upon information exhibited by the officer of the customs, the fact appeared not to warrant the seizure; but the justice, in favour of the officer refused to dismiss the information, so as the owners might have their brandy again. And now a *mandamus* was moved for, to compel him to determine the matter; which was granted accordingly. *Str.* 530.

H. 7 G. K. against *Newton* and others. By the 1 G. c. 13. s. 11. it is enacted, that two justices may summon any person to take the oaths before them; and if they do not appear, then on oath of serving such summons, the justices are to certify the same to the quarter sessions, where if the party so summoned doth not appear to take the oaths, he shall stand convicted of recusancy. The defendants were justices of the peace, and issued their summons accordingly; but coming afterwards to understand, that the party was a gentleman of fashion, and not suspected to be against the government; lest a transaction of this nature should be an imputation upon him, they refused to give the prosecutor his oath of the service of such summons, that the matter might go no further. And now upon motion against them for an *information*, the court declared, that the justices had no discretionary power to refuse to put the act in execution, and therefore granted an *information* against them. *Str.* 413.

Authority to appear on the face of their orders.

7. Where a special authority is given to justices out of sessions, it ought to appear in their orders, that that authority was exactly pursued. 2 *Salk.* 475.

To make a record of their proceedings.

8. In all cases where justices may hear and determine out of sessions (*viz.* on their own view, or confession, or oath of witnesses) the justices ought to make a record in writing under their hands of all the matters and proofs; which record notwithstanding in many cases they may keep by them. *Dalt. c.* 115.

To estreat fines.

9. And if upon such conviction, the offender is to be fined to the king, then the justices are to estreat such fine, and to send the estreat into the exchequer, whereby the

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barons of the exchequer may cause the said fine or forfeiture to be levied for the king's use. *Dalt. c. 115.*

10. Lord *Hale* says (contrary to the opinion of Lord *Coke*) that the justices out of sessions may issue their warrant for apprehending persons charged of crimes within the cognizance of the sessions, and bind them over to appear at the sessions, although the offender be not yet indicted. *1 H. H. 579.*

Whether a justice may issue his warrant for offences cognizable only in the sessions.

But in another place he says, this seemeth doubtful; and that one thing which seemeth to make against it is, that in most cases of this nature, though the party were indicted, or an information preferred, yet a *capias* was not the first process, but a *venire facias*, and *distringas*. *2 H. H. 113.*

And Mr. *Hawkins* on this point saith thus: It seems that anciently no one justice could legally make out a warrant for an offence against a penal statute, or other misdemeanor, cognizable only by a sessions of two or more justices; for that one single justice hath no jurisdiction of such offence, and regularly those only who have jurisdiction over a cause can award process concerning it; yet the long, constant, universal and uncontrolled practice of justices of the peace, seems to have altered the law in this particular, and to have given them an authority in relation to such arrests, not now to be disputed. *2 Haw. 84.*

However, as the authority of justices of the peace is by the statute law, and no statute hath expressly given to them such power (unless in special cases; which operate against, rather than establish, a general power); it seemeth best in ordinary cases, and more consonant to the practice of the superior courts, to issue a summons against the offender, and not a warrant, in the first instance; unless in cases of felony, or where the offender in other respects is to suffer corporal punishment.

11. Forasmuch as most of the business of a justice of the peace, consisteth in the execution of divers statutes, which cannot be sufficiently abridged but that they will come short of the substance and body thereof; therefore it shall be safest for the justices to have an eye to the statutes at large, and thereby to take their further and better directions, for their whole proceedings: For (as lord *Coke* observeth) abridgments are of good and necessary use to serve as tables, but not to ground any opinion, much less to proceed judicially upon them. *Dalt. c. 173.*

Not to trust to abstracts and abridgments.

Justices of the peace.

Not to trust to
clerks and transcribers.

12. In like manner, it is not safe for them to trust altogether to the care and judgment of their clerks, in drawing warrants and other instruments; much less, to the skill of parish officers in making copies of orders, and the like: But rather it is advisable to have good printed forms; and instead of copies to be taken upon occasion, to make out duplicates.

VI. Their indemnity and protection by the law in the right execution of their office; and their punishment for the omission of it.

His indemnity.

1. A justice of the peace is strongly protected by the law, in the just execution of his office.

Thus in the first place, he is not to be slandered or abused; as appears by the following report: *M. 11 G. Aston and Blagrove*. The plaintiff declared, that he was a justice of the peace, and that upon a *colloquium* of him and the execution of his office, the defendant said, *You are a rascal, a villain, and a liar*. After verdict for the plaintiff it was moved in arrest of judgment, that these words are not *actionable*. It was urged for the plaintiff; There is a great difference between magistrates and common tradesmen: Words of the latter must affect them in their particular way of dealing; but any thing that tends to impeach the credit of the former, is *actionable*: And although an *indictment* might not lie for these words, as perhaps not tending to a breach of the peace, yet nevertheless they are *actionable*; for in many cases words are *actionable* which are not *indictable*. After consideration, *Pratt Ch. J.* delivered the opinion of the court, that though *rascal* and *villain* were uncertain, yet being joined with *liar*, and spoken of a justice of the peace, they did import a charge of acting corruptly and partially, and therefore there ought to be judgment for the plaintiff. *Sir. 617. L. Raym. 1369.*

Afterwards, *T. 15 G. 2. Kent and Pocock*. These words spoken of a justice of the peace in the execution of his office, and relating thereto, were held *actionable*, viz. *Mr. Kent is a rogue*; according to the aforesaid case of *Aston and Blagrove*. *Sir. 1168.*

E. 7 G. K. and Revel. The defendant was *indicted*, for saying of Sir Edward Lawrence a justice of the peace, in the execution of his office, *You are a rogue and a liar*. It was moved, after verdict for the king, in arrest of judgment,

ment, that though the justice might have committed him for the contempt, yet the words are not *indictable*, since it is not to be presumed they would provoke the justice to a breach of the peace; which is the reason why indictments have been held to lie for words. But by the court, The allowing he might be committed, shews they were indictable. It is true, the justice may make himself judge and punish him immediately; but still, if he thinks proper to proceed less summarily by way of indictment, he may. The true distinction is, that where the words are spoken in the presence of the justice, there he may commit; but where it is behind his back, the party can be only indicted for a breach of the peace. Judgment for the king. *Str.* 420.

T. 14 G. 2. K. and Pocock. An *information* was moved for against the defendant, on account of words spoken of Mr. *Kent* a justice of the peace. And the affidavit stated, that in a conversation about a warrant granted by Mr. *Kent*, the defendant asked, if Mr. *Kent* was a sworn justice; and being answered, to be sure he was, else he would not act, the defendant replied, *If he is a sworn justice he is a rogue, and a forsworn rogue.* To this it was objected, that the words were not spoken to him in the execution of his office, but only in relation to what he had formerly done: And by the court, There ought to be no *information*; it is not the same insult and contempt, as if spoken to him in the execution of his office, which would make it a matter indictable. *Str.* 1157.

Nevertheless, according to the distinction in the afore-said case of *Aston and Blagrove*, although an *information* or *indictment* might not lie, yet it doth not follow but that the words were *actionable*; and so it seemeth to have been held in the case last but one abovementioned, of *Kent* and *Pocock*, which seemeth to have been no other than an *action* brought for this very same offence, after it had been determined that an *information* would not lie.

In the next place; he is not punishable at the suit of the party, but only at the suit of the king, for what he doth as judge, in matters which he hath power by law to hear and determine without the concurrence of any other; for regularly no man is liable to an *action* for what he doth as judge: But in cases wherein he proceeds ministerially, rather than judicially, if he acts corruptly, he is liable to an *action* at the suit of the party, as well as to an *information* at the suit of the king. 2 *Haw.* 85.

Justices of the peace.

And more explicitly, in the case of the king against *Young and Pitts*, esquires, justices of the peace for *Wiltshire*, which was upon an information moved for against the justices, for arbitrarily and unreasonably refusing to grant an alehouse licence; lord *Mansfield* Ch. J. declared, that the court of king's bench hath no power or claim to review the reasons of justices of the peace, upon which they form their judgments in granting licences, by way of appeal from their judgments, or over-ruling the discretion in that behalf intrusted to them. But if it clearly appears, that the justices have been partially, maliciously, or corruptly influenced in the exercise of this discretion, and have (consequently) abused the trust reposed in them, they are liable to prosecution, by indictment, or information; or even, possibly, by action, if the malice be very gross and injurious. If their judgment is wrong, yet their heart and intention pure, God forbid that they should be punished. And he declared that he should always lean towards favouring them; unless partiality, corruption, or malice shall clearly appear. Mr. Justice *Denison* also expressly allowed the discretionary power of the justices in granting licences, without appeal from their judgments, or having their just and honest reasons reviewed by any body. But yet, an improper and unjust exercise of their discretion, he said, ought to be under controul. But it must be a clear and apparent partiality or wilful misbehaviour, to induce the court to grant an information: Not a mere error in judgment. Mr. Justice *Foster* concurred in the same general principles. And Mr. Justice *Wilmot* was also very explicit, that the sole discretion of granting licences is in the justices of the division. Which being so, the rule is invariable, that this court will never interpose to punish a justice of the peace for a mere error in judgment. Therefore, even supposing the justices in the present case to have been mistaken from beginning to end; yet there is no ground, from any of the affidavits, to infer any partiality, malice, or corruption. And the court, being unanimously of opinion, that the justices had acted in this affair with candour and impartiality, discharged the rule to shew cause, with costs. *Burrow, Mansfield. 556.*

And in the case of the *King and Cox, E. 32 G. 2.* On shewing cause why an information should not be granted against the defendant being a justice of the peace, for refusing to receive an information against a baker for exercising

cising his trade on a Sunday; the court declared, that they would never grant an information against a justice for a mere error in judgment: But in this case they were of opinion that the justice had acted right in refusing; and they ordered the rule to be discharged, with costs. *Burrow, Mansfield. 785.*

And finally, in the case of the *King* against *Palmer* and *Baine*, esquires, and others, *E. 1 G. 3.* Upon shewing cause why an information should not be granted against two justices of the peace and others, for a misdemeanor, relating to the conviction of a poacher, and the circumstances attending it; the court thought proper, on consideration of the affidavits, to discharge the rule, as to all the defendants; with costs to be paid to the justices, but without costs as to the others. And they were, upon this occasion, most explicit in their declaration, that even where a justice acts illegally (which however was not the present case), yet if he has acted honestly and candidly, without oppression, malice, revenge, or any bad view or ill intention whatsoever, the court will never punish him in this extraordinary course of an *information*; but leave the party complaining to their ordinary legal remedy or method of prosecution, by *action* or by *indictment*. *Burrow, Mansfield. 1162.*

And the justice shall not be liable to be punished both ways, that is, both criminally and civilly; but before the court will grant an information, they will require the party to relinquish his civil action, if any such is commenced. And even in the case of an indictment, and tho' the indictment is actually found, yet the attorney general (on application made to him) will grant a *noli prosequi* upon such indictment, if it appears to him that the prosecutor is determined to carry on a civil action at the same time. *Burrow, Mansfield. 719. K. and Fielding.*

In the next place, by the 7 *J. c. 5.* it is enacted, that if any action shall be brought against a justice for any thing done by virtue of his office, he may plead the general issue, and give the special matter in evidence; and if he recovers, he shall have double costs.

And by the 21 *J. c. 12.* such action shall not be laid, but in the county where the fact was committed.

And moreover, by the 24 *G. 2. c. 44.* it is enacted, that no writ shall be sued out against, or copy of any process at the suit of a subject shall be served on any justice, for any thing done by him in the execution of his office; until

Justices of the peace.

notice in writing shall have been given to him, or left at his usual place of abode, by the attorney for the party, one month before the suing out, or serving the same; containing the cause of action, and indorsed with his name and place of abode; for which he shall be intitled to a fee of 20 s. and no more. *f. 1.*

And unless it is proved upon the trial, that such notice was given, the justice shall have a verdict and costs. *f. 3.*

And the justice may at any time, within one month after such notice, tender amends to the party complaining, or to his attorney; and if the same is not accepted, he may plead such tender in bar to the action, together with the plea of not guilty, and any other plea with leave of the court; and if upon issue joined, the jury shall find the amends tendered to have been sufficient, they shall give a verdict for the defendant; and in such case, or if the plaintiff shall be nonsuit, or discontinue, or if judgment be given for the defendant upon demurrer, the justice shall be intitled to the like costs, as if he had pleaded the general issue only. And if the jury shall find that no amends, or not sufficient, were tendered, and also against the defendant on such other plea, they shall give a verdict for the plaintiff, and such damages, as they shall think proper, which he shall recover with costs. *f. 2.*

And if the justice shall neglect to tender amends, or shall have tendered insufficient, before the action brought, he may, by leave of the court before issue joined, pay into court such sum as he shall see fit; whereupon such proceedings and judgment shall be had, as in other actions where the defendant is allowed to pay money into court. *f. 4.*

And no evidence shall be permitted to be given by the plaintiff on trial, of any cause of action, except such as is contained in the notice. *f. 5.*

And no action shall be brought against any constable or other officer, or any person acting by his order and in his aid, for any thing done in obedience to the warrant of a justice, until demand hath been made, or left at the usual place of his abode, by the party, or by his attorney, in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected for six days after such demand: And if after compliance therewith, any such action shall be brought, without making the justice, who signed the warrant, defendant; on producing and proving such warrant

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warrant at the trial, the jury shall give their verdict for the defendant, notwithstanding any defect of jurisdiction in the justice. And if such action be brought jointly against the justice and constable, on proof of such warrant the jury shall find for the constable: And if the verdict shall be given against the justice, the plaintiff shall recover his costs against him, to be taxed in such manner by the proper officer, as to include such costs as the plaintiff is liable to pay to such defendant, for whom such verdict shall be found. *f. 6.*

And moreover, no action shall be brought against any justice for any thing done in the execution of his office, unless commenced within six months after the act committed. *f. 8.*

2. On the other hand, it is enacted likewise, by the last ^{His punishment,} mentioned statute, that where the plaintiff in such action against a justice, shall obtain a verdict, and the judge shall in open court certify on the back of the record, that the injury for which such action was brought, was wilfully and maliciously committed, the plaintiff shall have double costs. *24 G. 2. c. 44. f. 7.*

Moreover, if a justice will not, on complaint to him made, execute his office, or shall misbehave in his office, the party grieved may move the court of king's bench for an information, and afterwards may apply to the court of chancery to put him out of the commission. *Crom. 7. 2 Atk. 2.*

But the most usual way of compelling them to execute their office in any case, is by writ of *mandamus* out of the king's bench.

And in actions brought against the justices, (for misdemeanor in the execution of their office), they are obliged to shew the regularity of their convictions; and the informations laid before them, upon which the convictions are grounded, must be produced and proved in court. *Self. Caf. V. I. p. 372. Hill and Bateman. 12 G.*

In the case of the *King and Symonds, E. 9 G. 2.* An information was moved for against the defendant, for assaulting and beating the mayor of *Yarmouth*, being a justice of the peace, in the execution of his office. On shewing cause, the question was, Whether the defendant could justify, the mayor having struck him first. By lord *Hardwicke* chief justice: He may justify it; for tho' a magistrate is protected by the law whilst he is in the execution of his office, yet in this instance he hath forfeited that protection, by beginning a breach of the

Justices of the peace.

peace himself. *Cases in the time of lord Hardwicke, 240.*

By the 18 G. 2. c. 20. If any person shall act as justice without a qualification of 100l. a year, and without making oath at the sessions, as before is mentioned; he shall forfeit 100l. half to the poor, and half to him that shall sue, with full costs.

Other matters relating to the very extensive office of this magistrate, may be found under their proper heads, in almost every title of this book.

Labourers. See **Servants.**

Landlord and tenant. See **Distress.**

Land tax.

THE land tax hath succeeded into the place of the ancient fifteenths and subsidies: And the land tax acts are framed in many respects after the manner of the ancient subsidy acts.

We meet with the payment of *fifteenths* as far back as the statute of *Magna Charta*; in the conclusion of which, the parliament grant to the king, for the concessions by him therein made, *a fifteenth part of all their moveable goods.*

This taxation was originally set upon the several individuals. Afterwards, to wit, in the eighth year of *Edward the third*, a certain sum was rated upon every town, by commissioners appointed in the chancery for that purpose, in like manner as commissioners are now appointed by the several land tax acts for carrying the said acts into execution; which commissioners rated every town at the fifteenth part of the value thereof at that time, and their taxation was recorded in the exchequer: And the inhabitants rated themselves proportionably for their several parts, to make
up

up the general sum upon the whole township. This *fifteenth* amounted in the whole to 29,000 l. or near thereabouts.

But as the necessities of government multiplied, and the kingdom became more populous, and the values of things increased, this *fifteenth* was insufficient for the occasions of the publick; and thereupon the number of *fifteenths* was augmented to two or three *fifteenths*. Which still proving defective, another and quite different taxation was superadded, namely, the *subsidy*; which was an aid to be levied of every subject of his lands or goods, after the rate of 4 s. in the pound for lands, and 2 s. 8 d. for goods. And accordingly, in the ancient *subsidy* acts, there is first a grant of so many *fifteenths*, and then the grant of a *subsidy*.

These *fifteenths* were certain, as hath been said, from the time of the eighth of *Edward* the third; but the *subsidy* was uncertain, and amounted anciently to about 70,000 l.; and a *subsidy* of the clergy at the same time (including the monasteries) was 20,000 l. In the 8 *Eliz.* a *subsidy* amounted to 120,000 l. In the 40 *Eliz.* it was not above 78,000 l. Afterwards it fell to 70,000 l.; and, by reason of a loose and uncertain way of assessing the same, kept continually decreasing, until the parliament found it necessary to change the method of taxation, and in the time of the long parliament certain sums were fixed upon the several counties; which course of taxation still continues.

2 *Inst.* 77. 4 *Inst.* 33, 34. *Hume's Hist. of Eng.* vol. 5. p. 226, 7. *Gillb. Excheq. ch.* 14.

The land tax acts are annual, but with little variation. The subject matter thereof, according to the natural order of the business, distributes itself under the following heads:

- I. *The first meeting of the commissioners, for issuing precepts to return assessors.*
- II. *The second meeting: Charge to the assessors, and therein concerning the manner of laying the assessment.*
- III. *The third meeting: Signing the assessment, with warrant to collect.*
- IV. *Fourth meeting: The appeal.*
- V. *Collecting.*
- VI. *Collector paying to the receiver general.*
- VII. *Receiver paying into the exchequer.*
- VIII. *Duplicates to be transmitted.*
- IX. *General penalty on officers not doing their duty.*
- X. *Indemnity of officers in doing their duty.*

I. *The first meeting of the commissioners, for issuing precepts to return assessors.*

Qualification of commissioners.

1. No person shall be capable to act as commissioner in any county or riding at large (the counties of *Merioneth, Cardigan, Carmarthen, Glamorgan, Montgomery, Pembroke, and Monmouth* excepted) unless he be seised of lands, tenements, or hereditaments, being freehold, copyhold, or leasehold, over and above all ground rents, incumbrances and other reservations, payable out of or in respect of such leasehold estates, which were taxed or did pay, in the year next before, in the same county or riding, for the value of 100 l. a year of his own estate.

But this shall not extend to commissioners being inhabitants of cities, boroughs, towns corporate, or cinque ports, or the inns of court or chancery.

And no attorney or solicitor, or person practising as such, shall act as commissioner, without having 100 l. a year as above. Nor shall any receiver general, or collector of any aid granted to his majesty, act as commissioner.

And if any commissioner disabled shall presume to act, he shall forfeit 50 l. to him who shall sue (in six months, 5 G. 3. c. 21.)

And

And if there is not a sufficient number of qualified commissioners within any city or place for which commissioners are particularly appointed, the commissioners of the county may act therein.

2. And no commissioner shall act, until he hath taken the oaths of allegiance, supremacy, and abjuration, which shall be administered to him by two or more commissioners, on pain of 200 l. to the king.

3. And they shall meet at the most usual and common places of meeting, on or before *April 30.*

4. At which first meeting, they may subdivide themselves, and the other commissioners not then present, so as three or more be appointed for each division; but shall not thereby restrain any commissioners from acting in any other part of the county.

And shall set down in writing, who, and what number of the commissioners shall act in each division, and shall deliver a copy thereof to the receiver general.

5. Which receiver general shall be appointed by the king, or in pursuance of his directions; and shall have a salary allowed to him by the lords of the treasury, not exceeding 2 d. a pound.

And the death or removal of a receiver general shall be notified to two or more commissioners, by the commissioners for the affairs of taxes, before the time of the first quarterly payment.

And the receiver general shall give notice under his hand and seal of his appointing a deputy (which appointment shall be also under hand and seal) to two or more commissioners, in ten days after the first meeting, and in ten days after the death or removal of a deputy.

6. And the said commissioners, at such first meeting, shall set down in writing the sums to be charged on each division, in proportion to the sums which were assessed thereon by the land tax act, in the fourth year of the reign of W. & M.

Note: There is said to have been a hearing on *Feb. 10. 1746*, before the barons of the exchequer, upon the question, whether the commissioners of the land tax, at their general meetings for the city and liberty of *Westminster*, have power to alter the *quota's* in their several parishes, which was continued next day; and that the barons declared they could not depart from the *4 W. & M.* and the parliament only could redress the aggrieved parishes.

But where the proportion upon any division shall exceed 4 s. in the pound, by reason of the estates of papists and

and nonjurors having been charged double within such division, in the 4 *W. & M.* (the sum raised in that year on every division governing the proportions at present) and the said estates are not now liable to pay double, by reason of their being in the hands of persons who have taken the oaths; in such case two or more commissioners may certify the same to the barons of the exchequer, who may order so much of the proportion upon such division, to be abated, as exceeds the full sum of 4 s. in the pound upon the estates therein.

Issuing precepts
to return assess-
ors.

7. Also, at such first meeting, two or more commissioners shall direct their several or joint precepts (A) to such inhabitants, high constables, petty constables, bailiffs and other officers and ministers, and such number of them as they shall think most convenient, to be presentors and assessors, requiring them to appear before the the said commissioners, at such time and place, not exceeding eight days after the date of such precept, as they shall appoint.

They shall also appoint assessors and collectors in privileged and extraparochial places.

But no person in a city, borough, or town corporate, shall be compelled to be an assessor or collector out of the limits thereof.

II. The second meeting: Charge to the assessors, and therein concerning the manner of laying the assessment.

Assessor not ap-
pearing.

1. Assessor not appearing, without lawful excuse to be made out on the oath of two witnesses; or appearing, and refusing to serve, shall forfeit to the king, not more than 5 l. nor less than 40 s.

Charge to the
assessors.

2. The commissioners shall openly read, or cause to be read to the assessors, the several rates, duties, and charges, and openly declare the effect of their charge unto them, and how and in what manner they ought to make their assessments, and how to proceed in the execution of the act.

Assessment on
personal estates.

Which shall be in the manner following; that is to say, 3. Towards raising the sums required, the charge upon personal estates shall be thus: viz. All persons having an estate in goods, wares, merchandizes, or other chattels, or personal estate whatsoever, within *Great Britain* or without, belonging to or in trust for them, shall pay 4 s. in the pound,

pound, according to the true yearly value thereof; that is to say, for every 100 l. of such ready money and debts, and for every 100 l. worth of goods, 20 s. and after that rate for every greater or lesser quantity. Excepting and deducting thereout such sums as they *bona fide* owe, and such debts as the commissioners shall judge desperate; and except stock upon lands and household stuff, and debts and loans owing from his majesty.

Every person having any publick *office* or employment and their substitutes shall pay 4 s. for every 20 s. of their salaries. Except military officers in the army or navy.

Every person having an *annuity* or *pension* out of the exchequer, or out of any branch of the revenue, or to be paid by any person whatsoever, shall pay 4 s. for every 20 s. except salaries charged upon lands which pay to the full, and except annuities especially exempted by act of parliament. And except annuities paid to superannuated commission or warrant sea officers, or to the widows of sea officers slain in the service of the crown. And except money lent or advanced to the government, on the security of the act. And except turnpike tolls, and the salaries of turnpike officers.

4. The charge upon *real* estates shall be as follows:— On real estates. That the entire sum may be raised, all manors, messuages, lands and tenements; all quarries, mines of coal, tin and lead, copper, mudick, iron, and other mines, iron mills, furnaces, and other iron works; salt springs, and salt works; all allom mines and works; all parks, chafes, warrens, woods, underwoods, coppices; all fishings, tithes, tolls, annuities, and all other yearly profits; and all hereditaments whatsoever—shall be charged with as much equality and indifference as possible, by a *pound rate*, to make up the several sums charged by the act on each county or place.

5. Where manors, messuages, lands, tenements, tithes, and hereditaments are incumbered with rent charges, annuities, fee-farm rents, rent service or other rents thereupon reserved or charged, the owners thereof may detain out of the payment of the same, a proportionable share of the land tax; provided that such rent or annual payment amount to 20 s. a year or more.

6. Receivers of fee-farm rents, or other chief rents due to the king, or to any person claiming by grant or purchase from him (by which are meant such fee-farm rents only, as are answerable to the king, or have been purchased from the crown by virtue of the statutes of 22 C. 2. c. 6. and

Fee-farm rents
of the crown.

22 & 23 C. 2. c. 24. or one of them, and which before *March* 25, 1693, were not payable to any college, hospital, reader in the universities, or other person exempted) shall allow 4 s. for every pound of the said rents, and so proportionably for any greater sum than 10 s. to the party paying the same; on pain of 20 l. to the party grieved, with full costs. Provided that such deduction or allowance do not exceed the sum assessed on the whole estate out of which such purchased fee-farm rent issues.

Charities ex-
empted.

7. But nothing herein shall charge any college or hall in *Oxford* or *Cambridge*, or the colleges of *Windsor*, *Eaton*, *Winton* or *Westminster*, or the corporation of the governors of the charity for the relief of the poor widows and children of clergymen, or the college of *Bromley*, or any hospital for or in respect of the sites of the said colleges, halls, or hospitals, or any of the buildings within the walls or limits of the same: Or any master, fellow, or scholar, or exhibitor of any such college or hall, or any reader, officer, or master of the said universities, colleges, or halls, or any masters or ushers of any schools; for or in respect of any stipends, wages, rents, profits, or exhibitions whatsoever, arising or growing due to them in respect of the said several places or employments: Or any of the lands which before *March* 25, 1693, did belong to the sites of any college or hall, or to *Christ's* hospital, *St. Bartholomew*, *Bridewell*, *St. Thomas*, and *Bethlehem* hospitals in *London* and *Southwark*; or any other hospitals or alms-houses, in respect of any rents, or revenues, which before *March* 25, 1693, were payable to them, being to be received and disbursed for the immediate use and relief of the poor of the said hospitals and alms-houses only.

But this shall not discharge any tenants of any houses or lands belonging to the said colleges, halls, or hospitals, alms-houses, or schools, who by their leases or other contracts are obliged to pay and discharge all rates, taxes, and impositions.

In general, all such lands, revenues, or rents belonging to any hospital or alms-house, or settled to any charitable or pious use, as were assessed in the 4 *W. & M.* shall be liable; and no other lands, revenues or rents, then belonging to any hospital or alms-house, or settled to any charitable or pious use, shall be charged, taxed, or assessed.

And if there shall be any question, how far any lands or tenements, belonging to any hospital or alms-house, not exempted by name, shall be liable, the same shall be finally determined at the appeal.

[But

[But lands given to charities since the 4 *W. & M.* shall not be exempted, because the sums upon the several divisions being now charged as they were in that year, if any lands, not then exempted, should now by being appropriated to charities or otherwise become exempted, this would lay a greater burden upon all the rest. But charities then exempted do lay no greater burden upon the rest now; because they were not charged in the general sum upon the division at that time. And such charities were exempted all along in the subsidy acts before.]

8. No poor person shall be charged with, or liable to the pound rate, whose lands, tenements, or hereditaments are not of the full yearly value of 20 s. in the whole. Poor exempted.

9. The commissioners shall assess the assessors. Who shall assess the assessors.

10. And all places, constablewicks, divisions, and allotments, shall be assessed in such county, hundred, rape, wapentake, constablewick, division, place, or allotment, as they have been usually assessed in. In what places or divisions persons shall be assessed.

Every person, whether he hath a certain place of residence or not, shall be rated for his *personal* estate, at the place where he is resident at the time of the execution of the act: And if he is out of the realm at the time of the assessment, he shall be rated at the place where he was last abiding in the realm.

H. 7 G. Purrett and Weeks. At Taunton assizes, before Price, baron of the exchequer. The plaintiff was an exciseman, and lived in the county of *Devon*, and executed his office in several parishes in that county, and also in a parish that extended into *Somersetshire*. And the commissioners of that county, apprehending they had a concurrent power with the commissioners of *Devon*, to tax him for his salary, on account that he executed his office in their county, they tax him accordingly, and for want of payment distrain. For which, trespass was brought; and ruled, that it well lay; for though he rides about to the publick houses in that county, yet he must be said to keep his office in the town where he lives and hath his books, and there he was only taxable. *Str.* 417.

And every householder shall, on demand of the assessors, give an account of the names and qualities of such persons as shall sojourn and lodge in their houses: on pain of 5 l. to be recovered as the other penalties.

In a city or town corporate, persons having their house in one parish or ward, and goods in another, shall be assessed for the whole where they inhabit.

But

[But

Land tax.

But if a person hath goods in any *other county* than where he is resident, or had his last residence; he may be assessed for such goods in the county where they are.

Members of parliament shall be assessed for their personal estate, at their mansion houses or places, where they most usually reside during the interval of parliament.

Officers shall pay for the profits of their offices or employments, where the office is executed; and not where the salary is payable: But all other *pensions*, stipends, and annuities (not charged upon lands) shall be assessed where they are payable.

Officers in the receipt of the exchequer, and other public offices, shall, on request of the assessors, deliver *gratis* true lists or accounts of all pensions, annuities, stipends, or other annual payments, and all fees, *salaries*, and other allowances; and if the tax thereupon shall not be afterwards paid, it shall be stopped in such offices, and an account thereof shall be given to the collectors.

And deputies in office shall pay for their principals.

[By the 32 G. 2. c. 33. relating to the duty upon offices, it is provided, that in all future assessments to the land tax, such offices shall not be assessed at a higher rate to the land tax, than they were in the year 1758.]

If a person, having two places of residence or otherwise, shall be *doubly charged* for any personal estate, office, or otherwise; then on certificate of two commissioners for the place of his last personal residence, under hand and seal, of the sum charged upon him there, and on oath made of such certificate before a justice of the place where the certificate shall be made, the person so doubly charged shall be discharged elsewhere.

If any person who ought to be taxed for his personal estate, shall, by changing his place of residence, or by any other fraud or covin escape from the taxation, and the same be proved before two commissioners or one justice where such person resideth, within one year after such tax made; he shall pay treble, to be levied on his lands and goods, on certificate thereof made into the exchequer by such justice or commissioners.

Every person shall be assessed for *lands*, where they lie, and not elsewhere.

And such tax shall be paid by the tenant, who shall deduct it out of his rent: and if any difference shall arise between landlord and tenant, the commissioners, or two of them, shall settle the same.

But contracts between landlord and tenant, or other persons, about paying taxes shall not be avoided thereby.

11. The tax on foreign ministers houses shall be paid by the landlord. Foreign ministers.

12. Every papist, or reputed papist, being 18 years of age, and upwards, who shall not have taken the oaths of allegiance and supremacy, 1 W. c. 8. shall pay double; unless he take the said oaths, before two commissioners in ten days after the first meeting. Papists and non-jurors.

Also every person (whether papist or not) being 18 years old and upwards, and not having taken the said oaths, and upon summons under hand and seal of two commissioners, refusing to take them, or neglecting to appear, shall pay double in like manner.

But quakers refusing to take the oaths, shall not pay double, if they shall make and subscribe the declaration of fidelity in the act of 1 W. c. 18.

13. And at and after the charge given, the commissioners shall take care, that warrants be issued forth, and directed to two at least of the most able and sufficient inhabitants, appointing and requiring them to be assessors (B); and shall also therein appoint a day and place for the said assessors to appear before them, and to bring in their assessments in writing. Appointing a time to bring in their assessments.

III. The third meeting: Signing the assessment, with warrant to collect.

1. The assessor, after he is appointed, neglecting or refusing to serve, or not appearing at such third meeting, without lawful excuse to be proved on oath of two witnesses, or not performing his duty, shall forfeit to the king any sum not exceeding 40 l. to be levied as the rates, and charged to the receiver general. Penalty on the assessor not appearing.

2. At such third meeting, the assessors shall deliver two duplicates of the assessment in writing, signed by them, to the commissioners. Duplicates to be delivered in.

3. And shall then also return the names of two or more able and sufficient persons, living within the places where they shall be chargeable respectively, to be collectors; for whom the parish or place shall be answerable. Collectors names to be returned.

4. Then three or more commissioners shall sign and seal two duplicates of the assessments, and deliver one of them to the collectors (whom they shall nominate and appoint) with warrant to the said collector to collect the same. (C) Signing the duplicates.

5 And

Appointing the
appeal day.

5. And they shall at the same time give notice to the collectors, at what time and place appeals may be heard and determined: which shall be at least 30 days from the time of signing and sealing and delivering the duplicate to the collectors.

IV. Fourth meeting: The appeal.

Notice of the ap-
peal day to be
given in the
church.

1. Every collector shall, within ten days after the receipt of the duplicates, cause publick notice to be given in every parish church or chapel within his district, immediately after divine service on the Lord's day, (if any such divine service shall be performed therein within that time) of the time and place so appointed by the commissioners for hearing and determining appeals: And shall also, on the same day, cause the like notices to be fixed in writing on the door of such church or chapel.

Collector shall
suffer the dupli-
cates to be in-
spected.

2. And the collector shall permit the duplicates to be inspected, at all seasonable times of the day without fee.

Appellant to give
notice in writing.

3. Every person intending to appeal, shall give notice thereof in writing to one or more assessors, that they may attend, if they think fit, to justify the assessment.

Commissioner
interested to
withdraw.

4. And in case of any controversy in apportioning the assessments, which concerns any commissioner, such commissioner concerned therein in his own right, or in right of any other for whom he shall act as steward, agent, attorney, or solicitor, shall have no voice, but shall withdraw until it be determined; on pain of any sum not exceeding 20 l. to be levied and paid as the other fines.

Relief in case of
overcharge.

5. And where it appears by proof upon oath, that lands are overcharged by the pound rate, the commissioners at the appeal may make abatement, and cause the sum abated to be reassessed upon the whole hundred, lathe, wapentake, or other division where the overcharges happen, although the pound rate of 4 s. in the pound be thereby exceeded; or upon any person therein undercharged; so that the whole sum charged on such division be fully answered.

Appeal deter-
mined, final,

6. And appeals once heard and determined on the appeal day, shall be final, without any farther appeal upon any pretence whatsoever; and without further trouble or suit in law, either in the king's bench or any other court.

V. Collecting.

Demand.

1. The collectors shall make demand of the parties themselves if they can be found, or else at the place of their last abode, or upon the premises charged.

2. And if any person shall refuse or neglect to pay to the collector on demand, he may levy the same by distress and sale of the goods of the person so neglecting or refusing: Distress.

And where any refusal, neglect, or resistance shall be made, he may (calling the constable to his assistance) break open in the day time any house, and by warrant of two commissioners any chest, trunk, box, or other thing, where any such goods are:

Or he may distrain upon the messuages, lands, tenements, and premises; and the distress so taken, may keep for four days, at the charges of the owner; and if not paid in four days, then the distress shall be appraised by two inhabitants or other sufficient persons, and sold by the collector, returning the overplus immediately (if any be) over and above the tax, and charge of taking and keeping the distress.

And if any difference shall arise upon taking the distress, the same shall be determined and ended by two commissioners.

In the case of the *India Company* and *Skinner, T. 7 W.* The defendant pleaded the general issue; and upon evidence it was objected, that the warrant was to break open in case of opposition; and this warrant was granted before any default; which ought not to be, no more than a warrant to distrain for poor rates before demand made; for the first ought to be only a confirmation of the assessment, and afterwards upon refusal a new warrant is to be made for distress. And *Holt Ch. J.* said, that strictly it was so; but the practice having been, in this case of taxes, to grant such a conditional warrant to distrain, *communis error facit jus.* Cases of S. 250.

However it is safer not to leave the non-feasance of the party to the judgment of the officers; but first to issue warrants empowering them to collect, as the act directeth; and then on proof of their refusal, after summoning the party, grant a warrant to distrain.

3. If any person shall refuse or neglect to pay for ten days after demand, or shall convey his goods so that distress cannot be made, he shall be committed (unless he is a peer) by warrant of two commissioners to the common gaol, until payment of the money assessed, and of the charges for bringing in the same. Commitment for want of distress.

4. Arrears may be levied by the present commissioners, Levying arrears, in the same manner as the present tax.

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D

And

Land tax.

And where lands or houses are unoccupied, and no distress can be found thereon, the collectors for the time being may distrain at any time after; and shall distribute the money to those who contributed to make it up.

Tax on wood-lands how to be levied.

5. Where woodlands are assessed, and no distress can be had, the collector or constable by warrant of two commissioners, at seasonable times of the year, may cut and sell wood (except timber trees) to pay the tax.

Tax on tithes, tolls and other annual profits, how to be levied.

6. If the tax upon any tithes, tolls, profit of markets, fairs, or fisheries, or any other annual profits, not distrainable, shall not be paid in six days after demand, the collector, constable, or other officer, by warrant of two commissioners, may seize and sell so much thereof, wheresoever found, as shall be sufficient to pay the tax and charges occasioned by non-payment.

VI. Collector paying to the receiver general.

Collector to pay to the receiver.

1. The collector shall pay the money received, to the receiver general or his deputy, quarterly; on or before *June 24. Sept. 29. Dec. 25. and March 25.* at such time and place as two commissioners shall appoint; so as the whole sums due be answered by the respective quarterly pay days; and so as the collector shall not be obliged to travel above ten miles from his usual place of abode.

Receiver neglecting to attend.

2. And if the receiver general shall wilfully neglect to attend at the time and place appointed, he shall forfeit 100 l. half to the king, and half to him who shall sue.

Receiver to give receipts.

3. The receiver general, or his deputy, shall give a receipt *gratis*.

Receiver to deliver lists of money received.

4. And at every time and place appointed by the commissioners for the collectors to pay the money to the receiver general, he shall deliver a list of the money received by him, to such person as two or more commissioners shall under their hands appoint; on pain of forfeiting a sum not exceeding 20 l. to be paid into the exchequer, as the fines on assessors and collectors.

Collector to have 3 d. a pound.

5. And the collectors shall have 3 d. in the pound, for collecting and giving receipts, which they may detain out of the last payment.

Collector making default.

6. If the collector shall keep in his hands any part of the money by him collected, longer than the time limited, or shall pay any part of it to any other person than to the receiver general, or his deputy, he shall forfeit 40 l.

And if any collector shall refuse or neglect to pay any sum by him received, or shall detain in his hands any money

ney by him received, and not pay the same as the act directs, two commissioners may imprison him, or may seize his estate as well freehold as copyhold, and all other estates both real and personal, to him belonging, or which shall come to his heirs, executors, or administrators. Which said commissioners may appoint a general meeting of the commissioners, and shall give publick notice thereof at least six days before: And the commissioners at such general meeting may sell such estates, or any part thereof, for payment.

And the commissioners at any general meeting may summon collectors, who have fraudulently converted land tax money to their own use, and cause them to pay the same, to make up the deficiency if there is any in that place; and if there is no deficiency, then to discharge so much of the proportion charged on such place, as that money doth amount to: And if such collector shall neglect or refuse so to pay, the commissioners may imprison him, and seize and sell his estate for payment.

And persons distraining upon collectors, may keep in their hands so much charges for making and keeping, or otherwise relating to the distress as two commissioners, who ordered the distress, shall judge reasonable.

7. And in case of failure in payment, the receiver general shall certify the same into the exchequer; and the place or persons neglecting shall be liable to process. Receiver to certify defaults.

8. If the full proportion upon any division shall not be fully assessed, levied, and paid; or if any share thereof shall be assessed upon a person not able to pay, or upon any empty or void house or land, where it cannot be collected or levied; or if through wilfulness, neglect, mistake, or accident, the assessment shall not be paid to the receiver general or his deputy: the same shall be reassessed upon such division. Deficiency to be reassessed.

9. If the receiver general shall return any persons in arrear who have paid, he shall forfeit treble damages to the party, and double the sum unjustly certified, to the king. Receiver falsely returning arrears.

And no receiver shall return any place in arrear, after three years; but the same shall be a debt on him and his securities.

VII. Receiver paying into the exchequer.

1. No receiver general, or any of his agents, shall maintain an action against the hundred, on account of being Receiver robbed.

Land tax.

being robbed in carrying the money; unless they be together in company, and in number three at least.

Paying into the
exchequer.

2. And the receiver general, within 20 days after receipt, shall pay the money into the exchequer.

Which if he shall pay otherwise than into the exchequer, or not within the time limited, he shall forfeit 500 l. to him who shall sue.

VIII. Duplicates to be transmitted. (D)

Duplicates to be
transmitted to
the receiver ge-
neral, and into
the exchequer.

1. The commissioners on or before Aug. 8. or in 20 days after (all appeals being first determined) shall cause to be delivered to the receiver general or his deputy a schedule or duplicate in parchment under their hands and seals, containing the whole sum assessed upon each parish or place; and shall transmit a like schedule or duplicate into the king's remembrancer's office in the exchequer; for which the remembrancer, or his deputy, shall give a receipt gratis, on pain of 10 l.

And in the schedules to be transmitted into the king's remembrancer's office, the commissioners shall distinguish and set down the gross sum charged in any division for double taxes, that it may be known how much the double taxes amount to in such division.

To the clerk of
the peace.

2. And by the 18 G. 2. c. 18. which requires that no person shall vote in the election of a knight of a shire, for any lands which have not been assessed to the land tax for 12 calendar months next before, it is enacted, That the commissioners or 3 of them shall sign and seal a duplicate of the copies of the assessments to be delivered to them by the assessors, after all appeals determined, and cause the same to be delivered to the clerk of the peace, to be kept amongst the records, and inspected by any person without fee.

Commissioners
clerks to have
1 d. 2 q. in the
pound.

3. All which being done, the commissioners clerks, for their trouble in writing the assessments, duplicates, and copies, and all warrants, orders, and instructions relating thereunto, shall have 1½ d. in the pound, to be paid by the receiver general, according to the warrant of two commissioners.

And on the death or removal of the commissioners clerks, into whose custody the duplicates of the several books of assessments, minute books, and other books and papers relating to the land tax have been delivered; such clerks so removed, or the executors or administrators of such clerk dying, shall within one calendar month after notice in writing

ting signed by 3 or more commissioners, or a true copy thereof given or left at the usual place of abode of such person or persons, deliver up all such books and papers to such person as the said commissioners shall by such notice appoint: on pain of 50 l. with full costs; half to the receiver general in aid of the land tax, and half to him who shall sue.

IX. General penalty on officers not doing their duty.

1. If any assessor, collector, or other person, shall wilfully neglect or refuse to perform his duty, or shall be guilty of fraud or abuse, three or more commissioners may fine him, not exceeding 40 l. which shall not be taken off, but by a majority of the commissioners who imposed it. To be levied by warrant of the said commissioners by distress and sale; in default of distress (if not a peer) to be committed to prison by two commissioners till payment.

General penalty.

2. And all fines shall be paid to the receiver general, and paid by him into the exchequer, and shall be inserted in the duplicates to be transmitted into the office of the king's remembrancer.

To be paid to the receiver general.

Other penalties are annexed to the several offences.

X. Indemnity of officers in doing their duty.

1. No commissioner, assessor, or collector, shall be liable to any other penalties than those inflicted by the act.

Officer liable to no penalties but those of the act.

2. And persons sued for any thing done in the execution hereof, may plead the general issue, and have treble costs.

Treble costs.

Note; The business of the commissioners of the land tax, in relation to the duties upon the perquisites of offices, is treated of under the title *Offices*; and in relation to the duties upon houses and windows, the same is treated of under the title *Windows*.

Land tax.

A. Precept to the high constable to return assessors.

Westmorland. { To John Bowness, gentleman, high constable of the East Ward within the said county.

WE the commissioners of the land tax, for the said county, whose names are hereunto set, and seals affixed, do hereby require you forthwith upon the receipt hereof, to issue out your warrants to all the petty constables within your said ward, in the form or to the effect here under following; that is to say,

Westmorland, { To the constable of —
East Ward.

BY virtue of a precept from the commissioners of the land tax for the said county to me directed, you are hereby required forthwith to give notice to the last collectors of the said duty within your constablewick, that they and every of them do personally appear before the said commissioners at — in — in the said county, on — the — day of — at the hour of — in the forenoon of the same day, in order to be appointed assessors of the said duty for this present year; and at the same time to receive their charge, how and in what manner to make their assessments, and otherwise how to proceed in the execution of their said office. And be you then there, to certify what you shall have done in the execution hereof. Herein fail you not. Given under my hand the — day of — in the year of our lord —
John Bowness, high constable.

And this you the said high constable are in nowise to omit, on the peril that shall ensue thereof. Given under our hands and seals the — day of — in the year of our Lord —

B. Appointment of assessors of the land tax, with their charge.

Westmorland. **B**Y virtue of an act for granting an aid to his majesty by a land tax, at four shillings in the pound, for the service of this present year, We the commissioners of the said duty for the county aforesaid do hereby nominate and appoint — to be assessors of the said duty, within the township of — in the county aforesaid. And we do hereby require you the said assessors, to make your assessment

ment for the same, according to the proportions of the last assessment for the said duty within your said township. And of your said assessment you are to make out two duplicates in writing, and sign the same with your names; and the same, together with the names of two or more able and sufficient inhabitants to be collectors, you are to deliver unto us at — in — in the county aforesaid, on — the — day of — at the hour of — in the forenoon of the same day. And you are to give notice to the said persons to be by you returned for collectors, that they also do appear at the same time and place, to receive their appointment and charge. Given under our hands and seals, the — day of — in the year of our Lord —

C. Appointment and charge of the collectors of the land tax, with warrant to collect.

Westmorland. **W**E the commissioners of the land tax for the said county, whose names are hereunto set, and seals affixed, do hereby nominate and appoint — to be collectors of the land tax for the township of — in the said county for this present year; and do hereby empower them to demand, collect, and receive the same. And you the said collectors are hereby required, within ten days after your receipt hereof, to cause publick notice to be given in the church or chapel immediately after divine service on the Lord's day, and to cause the like notice in writing to be affixed on the door of such church or chapel, that all appeals against the assessment for the same, will be finally heard and determined by the said commissioners, at — in — in the said county, on the — day of — now next ensuing. And if after the time of such determination, any person shall refuse or neglect to pay the same upon demand, you are hereby required forthwith to give notice unto us thereof, that such further proceedings may be had therein, as to law doth appertain. And the same, when collected, you are hereby required to pay unto the receiver general or his deputy, at the times and places hereafter following; that is to say, — deducting out of the last payment thereof 3d. for every pound by you collected, for your trouble in collecting and giving receipts. Given under our hands and seals, the — day of — in the year of our Lord —

Land tax.

D. Form of the duplicates to be transmitted to the receiver general, and into the exchequer.

Westmorland. **A** SCHEDULE, containing the whole sum assessed upon each parish or place, within the East Ward of the said county, for and towards an aid granted to his majesty by a land tax to be raised in Great Britain, for the service of the year one thousand seven hundred and sixty-five, and also the christian names and surnames of the respective assessors and collectors; made by us whose names are hereunto set and seals affixed, commissioners of the land tax for the said county, this—day of—in the year aforesaid.

		l.	s.	d.
Orton		32	17	4
Assessors	{ A. B. C. D.			
Collectors	{ E. F. G. H.			
Raisbeck		34	1	4
Assessors	{ I. K. L. M.			
Collectors	{ N. O. P. Q.			

(and so on.)

Larceny.

LARCENY comes from *latrocinium*, *latrocin*; and by contraction, or rather abuse, *larceny*. 3 Inst. 107.

- I. Of grand larceny in general.
- II. Of petit larceny.
- III. Larceny from the person.
- IV. Larceny from the house.
- V. Larceny in a booth or tent.
- VI. Larceny on a navigable river.
- VII. Other larcenies.
- VIII. Receiving stolen goods.

IX. Of-

- IX. Offering goods suspected to be stolen, to be pawned or sold.
- X. Advertising or receiving a reward for helping to stolen goods.
- XI. Charges of prosecution and conviction how to be paid.

I. Of grand larceny in general.

Grand larceny is a felonious and fraudulent taking, and carrying away by any person, of the mere personal goods of another, above the value of 12d. 1 Haw. 89.

Felonious and fraudulent] Felony is always accompanied with an evil intention, and therefore shall not be imputed to a mere mistake or misanimadversion; as where persons break open a door, in order to execute a warrant, which will not justify such a proceeding; for in such case there is no felonious intention. 1 Haw. 65.

For it is the mind that makes the taking of another's goods to be felony, or a bare trespass only; but because the variety of circumstances is so great, and the complications thereof so mingled, that it is impossible to prescribe all the circumstances evidencing a felonious intent, or the contrary; the same must be left to the due and attentive consideration of the judge and jury; wherein the best rule is, in doubtful matters rather to incline to acquittal than conviction. Only in general it may be observed, that the ordinary discovery of a felonious intent is, if the party doth it secretly or being charged with the goods denies it. 1 H. H. 509.

But nevertheless, doing it openly and avowedly doth not excuse from felony. So where a man came to *Smithfield* market to sell a horse, and a jockey coming thither to buy a horse, the owner delivered his horse to the jockey to ride up and down the market to try his paces, but instead of that, the jockey rode away with the horse, this was adjudged felony. *Kel.* 82.

So where a person came into a sempstress's shop, and cheapened goods, and ran away with the goods out of the shop, openly, in her sight, this was adjudged to be felony. *Raym.* 276.

So where a man comes into a house, by colour of a writ of execution, and carries away the goods; or sues out a replevin to get another man's horse, and then runs away with

with him ; this is felony under colour of law. 2 *Ventr.* 94. *Kel.* 83.

Taking] All felony includes trespass ; and every indictment must have the words *feloniously took*, as well as *carried away* : from whence it follows, that if the party be guilty of no trespass in taking the goods, he cannot be guilty of felony in carrying them away. 1 *Haw.* 89.

And from this ground it hath been holden, that one who finds the goods which I have lost, and converts them to his own use, with intent to steal them, is no felon ; and *a fortiori* therefore it must follow, that one who has the actual possession of my goods by my delivery, for a special purpose, as a carrier who receives them, in order to carry them to a certain place ; or a taylor who has them in order to make me a suit of clothes ; or a friend who is entrusted with them to keep for my use, cannot be said to steal them, by embezzling of them afterwards. 1 *Haw.* 89.

But yet it hath been resolved, that if a carrier open a pack, and take out part of the goods ; or a weaver who has received silk to work, or a miller who has corn to grind, take out part thereof, with intent to steal it, it is felony. 1 *Haw.* 90.

So where a man's goods are in such a place, where ordinarily they are or may be lawfully placed, and a person takes them, with intent to steal them, it is felony ; and the pretence of finding must not excuse. 1 *H. H.* 506.

So if a man's horse be going upon a common where he has a right to put him, and another take the horse with intent to steal him, it is no finding, but a felony. 1 *H. H.* 506.

So also, if the horse stray into a neighbour's ground or common, it is felony in him that so takes him. But if the owner of the ground takes him doing damage, or the lord seize him as a stray, though perchance he hath no title so to do, yet here is not a felonious intention, and therefore cannot be felony. 1 *H. H.* 506.

If one man's sheep stray into another man's flock, and that other person drives it along with his flock, or by bare mistake shears it, this taking is not a felony ; but if he knew it to be another's, and marks it with his mark, this is an evidence of felony. 1 *H. H.* 507.

Lord *Hale* says, If one man take another man's hay or corn, and mingles it with his own heap or stock ; or take another man's cloth, and embroider it with silk or gold ; such other person may retake the whole heap of corn, or
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cock of hay, or garment and embroidery also; and this retaking is no felony, nor so much as a trespass. 1 H. H.

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It seems generally agreed, that one who has the bare charge, or the special use of goods, but not the possession of them; as a shepherd who looks after my sheep, or a butler who takes care of my plate, or a servant who keeps a key to my chamber, or a guest who has a piece of plate set before him in an inn may be guilty of felony in fraudulently taking away the same. 1. Haw. 90.

By the 21 H. 8. c. 7. Servants imbezilling their master's goods to the value of 40s. or above (although this taking be no trespass) shall be punished as felons. But this shall not extend to any apprentice, nor to any person within 18 years of age.—And by the 12 An. c. 7. If it is taken out of an house, or outhouse, it is felony without benefit of clergy.

Also by the 3 W. c. 9. If any person shall take away with intent to steal, or imbezil, any furniture out of his lodging, he shall be guilty of felony.

And carrying away] To make it come within this description, it seemeth that any the least removing of the thing taken from the place where it was before, is sufficient for this purpose, though it be not quite carried off: And upon this ground, the guest, who having taken off the sheets from his bed, with an intent to steal them, carried them into the hall, and was apprehended before he could get out of the house, was adjudged guilty of larceny: So also was he, who having taken an horse in a close, with an intent to steal him, was apprehended before he could get him out of the close. 1 Haw. 93.

By any person] A wife may be guilty thereof, by stealing the goods of a stranger; but not by stealing the goods of her husband. 1 Haw. 93.

It is said by Mr. Dalton and others, that it is no felony for one reduced to extreme necessity, to take so much of another's victuals, as will save him from starving; but lord Hale says, that this rule by the law of England is false; and therefore that if a person, being under necessity for want of victuals or clothes, steals another man's goods, it is felony. 1 H. H. 54.

If one stealeth another man's goods, and afterwards another stealeth the same from him; the owner may charge the first or second felon at his choice. Dalt. c. 162.

An

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An alien, whose sovereign is in amity with the crown of *England*, residing here, and receiving the protection of the law, oweth a local allegiance to the crown during the time of his residence. And if, during that time, he committeth an offence, he shall be liable to be punished for the same, even as a natural born subject. For his person and personal estate are as much under the protection of the law, as the natural born subjects; and if he is injured in either, he hath the same remedy at law for such injury. *Fost.* 185.

So also, an alien whose sovereign is at enmity with us, living here under the king's protection, committing offences, may be proceeded against in like manner; for he oweth a temporary local allegiance, founded on that share of protection he receiveth. *id.*

So also a prisoner of war, although he is not properly subject to the municipal laws of this realm, yet if he commits any offence against the law of nations, or the light of nature and the fundamental laws of all society, he is liable to answer in the ordinary course of justice, as other persons offending in like manner are. As in the case of *Peter Molières*, a French prisoner, who was indicted at the gaol delivery for the city of *Bristol* in *August* 1758, before *Sir Michael Foster*, for privately stealing in the shop of a goldsmith and jeweller, a diamond ring valued at 20*l.* *Sir Michael* says, he thought it highly improper to proceed capitally upon a local statute, against a prisoner of war; and therefore advised the jury to acquit him of the circumstance of stealing in the shop as by the statute, and to find him guilty of simple larceny to the value laid in the indictment. Accordingly, he was burnt in the hand, and sent to the prison appointed for French prisoners. *id.* 188.

Of the mere personal goods] *Mere*; for if the personal goods favour any thing of the realty, it cannot be larceny. And therefore they ought to be no way annexed to the freehold; therefore it is no larceny, but a bare trespass, to steal corn or grass growing, or apples on a tree; but it is larceny to take them being severed from the freehold, as wood cut, grass in cocks, stones digged out of the quarry; and this, whether they are severed by the owner, or even by the thief himself, if he sever them at one time, and then come again at another time and take them. 1 *Haw.* 93. 1 *H. H.* 510.

But

But by the 4 G. 2. c. 32. Every person who shall steal, rip, cut, or break, with intent to steal, any lead, iron bar, iron gate, iron palisadoe, or iron rail, fixed to any building, or in any garden, orchard, court yard, fence, or out-let belonging to any building; he, his aiders, and abettors, and also all who shall knowingly buy or receive the same, shall be guilty of felony, and be transported for seven years.

Also the goods ought to have some worth in themselves, and not to derive their whole value from the relation they bear to some other thing, which cannot be stolen; as paper or parchment, on which are written assurances concerning lands, or obligations, or covenants, or other securities for a debt, or other *chose* in action. 1 Haw. 93.

But by the 8 H. 6. c. 12. If any person shall steal any record or process belonging to any of the courts at *Westminster*, by reason whereof any judgment shall be reversed, he shall be guilty of felony.

And by the 2 G. 2. c. 25. If any person shall steal, or take by robbery, any exchequer order or tallies, or other orders, intitling any other person to any annuity or share in any parliamentary fund; or any exchequer bills; bank notes; *South Sea* bonds; *East India* bonds; dividend warrants of the bank, *South Sea* company, *East India* company, or any other company; bills of exchange; navy bills or debentures; goldsmiths notes for payment of money; or other bonds or warrants, bills, or promissory notes for payment of money; he shall be guilty of felony, with or without the benefit of clergy, in the same manner as he would have been, if he had stolen or taken by robbery any other goods of like value with the money due thereon: But not to work corruption of blood.

The goods ought also not to be things of a base nature, as dogs, cats, bears, foxes, monkeys, ferrets, and the like; which, howsoever they may be valued by the owner, shall never be so highly regarded by the law, that for their sakes a man shall die: But yet the stealing of an hawk, knowing it to be reclaimed, is felony by the common law and by statute, in respect of that very high value which was formerly set upon that bird. 1 Haw. 93.

Of another] It seems agreed, that the taking of goods, whereof no one had a property at the time, cannot be felony; and therefore that he who takes any treasure trove, or a wreck, wail, or stray, before they have been seized by the persons who have a right thereto, is not guilty

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guilty of felony, but shall be punished by fine. 1 *Haw.* 94.

But yet the taking of these must be, where the party that takes them, really believes them to be such, and colours not a felonious taking under such a pretence; for then every felon would cover his felony under that pretence. 1 *H. H.* 506.

Neither shall he who takes fish in a river or other great water, wherein they are at their natural liberty, be guilty of felony; as he may be, who takes them out of a trunk or pond. 1 *Haw.* 94.

Upon the like ground it seems clear, that a man cannot commit felony, by taking hares or conies in a warren, or old pigeons being out of the house; but it is agreed, that one may commit larceny, in taking such or any other creatures *feræ naturæ*, if they be fit for food, and reduced to tameness, and known by him to be so. 1 *Haw.* 94.

Also it is said, that there may be felony in taking goods, the owner whereof is unknown; in which case, the king shall have the goods, and the offender shall be indicted for taking the goods of a person unknown; and it seems, that in some cases the law will rather feign a property, where in strictness there is none, than suffer an offender to escape. 1 *Haw.* 94.

He who steals goods belonging to a parish church, may be indicted for stealing the goods of the parishioners. 1 *Haw.* 94.

And it hath been adjudged, that he who takes off a shroud from a dead corps, may be indicted as having stolen it from him, who was the owner thereof when it was put on; for a dead man can have no property. 1 *Haw.* 94.

Above the value of 12 d.] The learned editor of *Hale's* history of the pleas of the crown observes, that in former times, though the punishment of theft was capital, yet the criminal was permitted to redeem his life by a pecuniary ransom; but in the 9 *H. 1.* it was enacted, that whoever was convicted of theft should be hanged, and the liberty of redemption was entirely taken away; which law continues to this day. But considering the alteration in the value of money, the severity of it is much greater now than it was then; for 12 d. would then purchase as much as 40 s. will now: And yet a theft above the value of 12 d. is still liable to the same punishment. Upon which Sir *H. Spelman* justly observes, that while all things
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else have risen in their value, and grown dearer, the life of man is become much cheaper; and from hence takes occasion to wish, that the ancient tenderneſs of life were again reſtored. 1 *H. H.* 12.

And lord *Coke*, obſerving that when the ſtatute of the 3 *Ed.* 1. was made, which makes ſtealing of goods above the value of 12 d. to be grand larceny, the ounce of ſilver was at the value of 20 d. and now it is at the value of 5 s. and above, draws this concluſion, that the thing ſtolen ought to be reaſonably valued, that is, having reſpect to the great alteration in the value of money. 2 *Inſt.* 189, 190. For 20 s. were then a real pound weight; which name we ſtill retain, although the weight is much diminiſhed.

If two perſons or more, together, ſteal goods above the value of 12 d. every one of them is guilty of grand larceny; for each perſon is as much an offender as if he had been alone. 1 *Haw.* 95.

Alſo it ſeems the current opinion of all the old books, that if one at ſeveral times ſteal ſeveral parcels of goods, each under the value of 12 d. but amounting in the whole to more, from the ſame perſon, and be found guilty thereof on the ſame indictment, he ſhall have judgment of death as for grand larceny; but this ſeverity is ſeldom practiſed. 1 *Haw.* 95.

II. Of petit larceny.

Petit larceny agrees with grand larceny in the ſeveral particulars abovementioned, except only the value of the goods (and except as hereafter followeth); ſo that wherever an offence would amount to grand larceny, if the thing ſtolen were above the value of 12 d.; it is petit larceny, if it be but of that value or under. 1 *Haw.* 95.

And if one be indicted for ſtealing goods to the value of 10 s. and the jury find ſpecially, as they may, that he is guilty, but that the goods are worth but 10 d. he ſhall not have judgment of death, but only as for petit larceny. 1 *Haw.* 95.

In petit larceny there can be no acceſſaries, neither before nor after. 1 *H. H.* 530.

By the 3 *Ed.* 1. c. 15. Perſons indicted of petit larceny, if they were not guilty of ſome other larceny aforetime, are bailable by juſtices of the peace. And it ſeems to be agreed, that there is no neceſſity, that ſuch perſon be of good

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good reputation: But yet if the crime be open and manifest, it seems that they ought not to be bailed; but if there be any colour of probability for their innocence, it seems most agreeable to the intention of the statute to bail them, 2 Haw. 101.

For a justice of the peace, before whom an offender shall be brought for petit larceny out of sessions, may not punish the said offender by his discretion, and so let him go; but must have him committed or bailed, to the intent he may come to his trial, as in cases of other felonies: And if upon his trial, the jury shall find the goods stolen to exceed 12 d. in value, the offender shall have judgment to die for the fault. Dalt. c. 154.

It seemeth that all petit larceny is felony, and consequently requires the word *feloniously* in an indictment for it; yet it is certain, that it is not punishable with the loss of life or lands, but only with the forfeiture of goods, and whipping, transportation, or other corporal punishment. 1 Haw. 95.

If a man appear to be obstinately mute, on an arraignment of petit larceny, he shall not have judgment of *pain fort et dure*, as in cases of grand larceny: But he shall have the like judgment as if he had confessed the indictment. 2 Haw. 329.

III. Larceny from the person.

If the goods are taken from a man's person, the offence receives a farther degree of guilt; and if it is attended with putting him in fear, it is called *robbery*; for which see that title.

If it is without putting him in fear, then it is called barely *larceny from the person*. 1 Haw. 95.

If it is done privily without his knowledge, by picking of pockets, or otherwise, it is excluded from the benefit of clergy by the 8 El. c. 4. (That is, if the thing stolen be above the value of 12 d. 2 H. H. 366.) But this statute extendeth not to accessaries, either before or after. 2 Haw. 350.

If it is done openly and avowedly before his face, it is within the benefit of clergy, (1 Haw. 97.) except where it is committed in a dwelling house, or outhouse thereunto belonging, to the value of 40 s. from which the benefit of clergy is taken away, by the 12 An. st. 1. c. 7. hereafter following.

IV. Larceny from the house.

This must be understood where the offence falls short of burglary.

1. By the 3 *W. c.* 9. Every person that shall feloniously take away any goods, being in any dwelling house, any person being therein, and put in fear; or shall rob any dwelling house in the day time, any person being therein; he, his comforters and abettors, shall be guilty of felony without benefit of clergy.

Robbing a dwelling house, some person being therein.

2. And by the 39 *El. c.* 15. Every person who shall be convicted of the feloniously taking away in the day time any money or goods of the value of 5s. in any dwelling house, or outhouse thereunto belonging, and used to and with the same, altho' no person be therein, shall be guilty of felony without benefit of clergy.

Robbing an house to the value of 5s. no person being therein.

This requires an actual breaking, and not entring by the doors being open. 1 *H. H.* 548.

3. And by the 12 *Ann. st.* 1. *c.* 7. Every person that shall feloniously steal any money, goods, or merchandizes, to the value of 40s. being in any dwelling house, or outhouse thereunto belonging, altho' it be not broken open, nor any person be therein, shall be guilty of felony without benefit of clergy.

Stealing out of an house to the value of 40s. no person being therein, and the same not broken open.

4. And by the 1 *Ed.* 6. *c.* 12. *f.* 10. Every person who shall be convicted of breaking any house in the day-time, any person being therein, and put in fear, shall be guilty of felony without benefit of clergy.

Breaking a house in the day time, any person being therein, and put in fear.

And this altho' nothing be actually taken: But it requires not only an actual breaking, and putting in fear, but also an entry *with intent to commit felony*, and so to be laid in the indictment. 1 *H. H.* 548.

5. By the 10 & 11 *W. c.* 23. Every person that shall by night or by day, in any shop, warehouse, coach-house, or stable, privately and feloniously steal any goods, wares, or merchandizes, to the value of 5s. altho' it be not broken open, nor any person be therein, shall be guilty of felony without benefit of clergy.

Shoplifting to the value of 5s.

Warehouse] In the case of *John Howard*, at the *Old Baily*, July 3. 1751. He was indicted on this statute, for privately stealing goods the property of *Messieurs Fludyer* and company, in the warehouse of *John Day*: There was another count in the indictment, charging that the prisoner stole the goods of *John Day* in his warehouse. The

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case upon evidence appeared to be, that *John Day* kept a common warehouse by the water side, where merchants did usually lodge goods intended for exportation, till they could have an opportunity of putting them on board. The goods in the indictment were sent by *Fludyer* and company to this warehouse, in order to be put on board a vessel for exportation, and were stolen by the prisoner in this warehouse. The court was of opinion, that this is not a case within the statute. For by the word *warehouse* in the statute is meant, not a mere repository for goods, but such places where merchants and other traders keep their goods for sale, in the nature of shops, and whither customers go to view them. And though the goods in this case might with propriety enough be charged to be the goods of *John Day*, since he had the charge and possession of them, which made him answerable to his principals for them; yet still the same objection recurreth, his warehouse was not a place for sale, but merely safe custody. Accordingly the larceny being fully proved, the prisoner was by the direction of the court found guilty of larceny, to the value laid in the indictment, and acquitted of stealing privately in the warehouse.— It has been generally held, that the meaning of this act, with regard to *shoplifting*, is, that the goods must be such as are usually exposed to sale in the *shop*, and not any other valuable thing which may happen to be put there. And it seemeth that the same equitable construction should take place with regard to *warehouses*. The goods should be such as are usually exposed to sale in such places. And tho' *coach-houses* and *stables*, which are likewise named in the act, are not places for sale, yet still in the construction of so penal a law, it will not be amiss to carry the same equity as far as may be with regard to them. The goods should be such as are usually lodged in those places. *Fost. 77.*

Privately] If it shall appear on the evidence, as it often doth, that those places were *broke open* at the time of the larceny, the case (as it seemeth) will not come within the act. For the words are, — if any person shall *privately* steal, — which seemeth to exclude all cases, where any degree of force is used to come at the goods. *id. 79.*

Any goods, wares, or merchandize,] In which words *money* is not included. For altho' the word *goods* may in a large sense take in money, and often doth, yet being connected with *wares and merchandizes*, the safer construction of so

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penal a statute will be, to confine it to goods of like kind, goods exposed to sale. *id.*

In like manner, it was ruled, upon the same principle at *Maidstone* Lent assizes 1752, in the case of *George Grimes*, indicted on the statute, 24 G. 2. c. 45. for stealing a considerable sum of money out of a ship in port: Tho' great part of it consisted in *Portugal* money, not made current by proclamation, but commonly current. *id.*

But *horses* seem clearly to be included under the word *goods*, by reason of the mentioning *coach-houses* and *stables* before; and *horse stealers* are specified in the subsequent parts of the act.

6. Every person who shall apprehend any one guilty of breaking open houses in a felonious manner; or of privately and feloniously stealing goods, wares, or merchandizes, of the value of 5s. in any shop, warehouse, coach-house, or stable, tho' they be not broken open, and altho' no person be therein to be put in fear, and shall prosecute him to conviction, shall have a certificate without fee, under the hand of the judge, certifying such conviction, and within what parish or place the felony was committed, and also that such felon was discovered and taken, or discovered or taken, by the person so discovering or apprehending; and if any dispute arise between several persons so discovering or apprehending, the judge shall appoint the certificate into so many shares to be divided among the persons concerned as to him shall seem just and reasonable:

Reward for convicting an offender; Exemption from parish offices.

And if any person shall happen to be slain by any such housebreaker, or other felon as aforesaid, in endeavouring to apprehend him, the executors or administrators of such person slain, shall have the like certificate:

Which certificate shall be inrolled by the clerk of the peace of the county in which it shall be granted; for which he shall have 1s.

And the said certificate may be once assigned over, and no more:

And the original proprietor, or the assignee of the same, shall by virtue thereof be discharged from all manner of parish and ward offices, within the parish or ward where the felony was committed.

But the certificate shall not be assignable, after it has been once made use of to exempt any person from such office. 10 & 11 W. c. 23.

From all manner of parish and ward offices] E. 29 G. 2. K. and Davis. Motion to quash a conviction and the affirmance of it on appeal, removed into the king's bench by certiorari; upon this case:—The defendant, being assignee of a certificate under this act, was appointed by the trustees under an act of the 22 G. 2. to be collector of the parish rates for repair of the roads within the parish of St. Leonard's Shoreditch; and refusing to take the office upon him, insisting that he was exempted by the benefit of his certificate, he was convicted before a justice; and this conviction being affirmed upon appeal to the sessions, it was now moved to quash these proceedings as illegal. After argument on shewing cause:—By Ryder Ch. J. The question is, Whether the defendant has a right to be exempted from this office by virtue of his certificate? The act exempts the party, and his assignee, from all parish and ward offices. Here are two questions: First, whether this is a parish office; secondly, whether it is within this act; and tho' the latter may seem to be a consequence of the former, yet it may be necessary to consider, whether this is the old office of surveyor, or a new office. It is not necessary for a parish officer to be chosen by the parishioners. A parish office must be exercised about parish business; and the officer must be a parishioner: Both which ingredients are here. It may be a question of nicety, whether this act extends to new offices; tho' I give no opinion as to this point. The office is not co-extensive with that of surveyor; but yet it seems part of that old office. It cannot be presumed, that the 22 G. 2. meant to take away any privilege which the party had before. Therefore as I do not think this is a new office, I think the conviction and affirmance thereof ought to be quashed; without giving any opinion, whether the exemption will extend to a new office, which did not exist at the time of the 10 & 11 W.—Dennison J. The question is, Whether the collector of the parish rates in the parish, within the 22 G. 2. is a parish officer within the benefit of the certificate under the 10 & 11 W. I think the act of 10 & 11 W. ought to have a liberal construction. The office of surveyor is partly to be executed by this collector. And it is in fact an old office, divided by an act of parliament, and to be executed by two persons. And the collector is certainly as much a parish officer, as the surveyor appointed under this act of parliament. A covenant to pay taxes, extends to subsequent taxes of the same kind. So a privilege of persons from offices. The act does not

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confine it to offices in being. It was intended as a reward. Therefore the new modelling an old office, shall have the same benefit and construction, as the old office itself would be intitled to.——*Foster J.* This must certainly be taken to be a parish office. For the duty is confined to the parish, and to be executed by an inhabitant. I do not take it to be a new office; for it is part at least of the old one. I will go a little further, and suppose it an entirely new created office; and yet if a parish office, I should think it within the 10 & 11 W. Clergymen, at common law are exempted from all offices; and therefore would be exempted from the new offices. So an attorney's privilege extends to all matters of like nature. So dissenting ministers, being exempted from all offices by the toleration act, are exempt from new offices, as well as old ones.——*Wilnot J.* The words of the act of 10 & 11 W. are as general as can be. Nothing can more contribute to the publick safety than apprehending felons, which is the object of the act. It is not necessary to give an opinion; but I take it, if this had been a new office, it would have been within the exemption. This office has every badge of a parish office. It must be exercised by a parishioner; within the parish; the rates are to be applied to a parochial purpose; and I think it not necessary that a parish officer should be appointed by the parish, as the constable is a parish officer, tho' not named by the parish. Nothing can be clearer, than that this is part of the old office of surveyor.——Therefore the conviction, and affirmation thereof, were quashed.

7. And moreover, as a further reward, every person ^{40 l. reward for} who shall apprehend any person guilty of the felonious ^{convicting.} breaking and entering of any house in the day time, and prosecute him to conviction, shall have a certificate under the hand of the judge, without fee, to be made out and delivered before the end of the assizes, certifying the conviction, and in what parish the said felony was committed, and also that such felon was taken by the person claiming the reward; and if any dispute shall happen to arise between the persons claiming, the judge shall by the said certificate appoint the same to be paid amongst the parties claiming the same, in such shares and proportions as to him shall seem just and reasonable:

And on tender of such certificate to the sheriff, and demand made, he shall pay to the person so intitled the sum of 40 l. without fee, within one month after such tender

tender and demand; on pain of forfeiting double, with treble costs. 5 *An. c. 31.*

40 l. to the executors of a person killed.

8. And if any watchman or any other person be killed in endeavouring to apprehend any such housebreaker, his executors or administrators shall have a certificate delivered under the hand and seal of the judge, or of the two next justices, of such person being so killed; which certificate they shall, upon sufficient proof before them made, give without fee: Whereupon such executor or administrator shall be intitled to receive the like sum of 40 l. in like manner. 5 *An. c. 31. f. 2.*

40 l. and a pardon for convicting accomplices.

9. And moreover, if any person being out of prison, shall commit any such housebreaking in the day time as aforesaid, and afterwards discover two or more the like offenders, so as two or more be convicted, he shall have the like reward and allowance of 40 l. and also all other advantages which are given to persons who shall apprehend and convict any the like offenders; and shall also have the king's pardon for all burglaries, robberies, and felonies (except murder and treason) by him committed before such discovery made; which pardon shall be likewise a good bar to an appeal. 5 *An. c. 31. f. 4.*

Sheriff to be repaid out of the treasury.

10. And the sheriff on producing the certificates, and receipts for the said rewards, may deduct the same on his accounts; and if he have not money in his hands, he shall be repaid out of the treasury, on certificate from the clerk of the pipe. 5 *An. c. 31. f. 3.*

Or instead of charging the same in his accounts, he may immediately apply to the commissioners of the treasury, who shall forthwith repay the same without fee. 3 *G. c. 15. f. 4.*

V. Larceny in a booth or tent.

Persons found guilty of robbing any person in any booth or tent, in any fair or market, the owner, his wife, children, or servants being within, whether they be sleeping or waking, shall suffer as felons without benefit of clergy. 5 & 6 *Ed. 6. c. 9. f. 5.*

VI. Larceny on a navigable river.

By the 24 *G. 2. c. 45.* All persons who shall feloniously steal any goods or merchandize of the value of 40 s. in any ship,

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ship, barge, lighter, boat or other vessel or craft, upon any navigable river or in any port of entry or discharge, or in any creek belonging thereto, or from off any wharf or key adjacent to any navigable river, port of entry or discharge, or shall be present and assisting therein, shall be guilty of felony without benefit of clergy.

And by the 2 G. 3. c. 28. Persons navigating bum boats on the river *Thames*, for the purpose of selling liquors, slops, tobacco, fruit, greens, gingerbread, or other such like ware, except such boats as shall be entred at *Trinity House*; and persons taking in exchange, or by way of barter, or unlawfully receiving any ropes, cordage, tackle, goods, stores, or merchandize of any vessels in the river; or cutting, damaging, and spoiling any cordage, cable, buoys, buoy rope, headfast, or other fast or rope belonging to any ship in the river, with intent to steal the same; shall be punished as in the said act is directed; which act being somewhat long, and only local, it is thought fit to refer to the act itself for a more particular description of the offences, and for the manner of conviction and punishment.

VII. Other larcenies.

There are moreover divers other larcenies, which are not here specified, the same being inserted under the several titles in this book, to which they do more properly belong, That is to say,

Larceny in stealing woollen cloth off the tenters in the night time, is inserted under the title *Woollen manufacture*.

Larceny in stealing linen, fustian, callico, or cotton cloth, yarn, or goods laid to be printed, bleached, or dried, to the value of 10s. under the title *Linen cloth*.

Larceny in stealing cattle or sheep (with a reward of 10l. for convicting an offender) under the titles *Cattle* and *Sheep*.

Larceny in stealing deer in parks, conies or hares in warrens, or fish in ponds, under title *Game*.

Larceny in stealing hawks or swans, also under title *Game*.

VIII. Receiving stolen goods.

1. By the 3 *W. c.* 9. If any person shall buy or receive any stolen goods, knowing the same to be stolen; he shall be deemed an accessory after the fact, and suffer accordingly. *f.* 4.

2. And by the 5 *An. c.* 31. If any person shall buy or receive any stolen goods, knowing them to be stolen, or shall receive, harbour, or conceal any felons or thieves, knowing them to be so; he shall be deemed accessory to the felony, and, being convicted on the testimony of one witness, shall suffer death as a felon convicted. *f.* 5.

3. And by the 4 *G. c.* 11. Persons convicted of receiving or buying stolen goods knowing them to be stolen, may be transported for 14 years. *f.* 1.

In the case of *Abraham Evans*, at the sessions at the Old Baily in May 1749, *John Avery* and *Abraham Evans* were indicted, *Avery* for privately stealing from the person of *Sir Giles Payne*, one silk handkerchief, value 12 d.; and *Evans* for feloniously receiving the same, knowing it to be stolen. *Avery* was found guilty to the value of 10 d. and was ordered to be transported for seven years. *Evans* was likewise convicted of receiving the goods knowing them to be stolen; but judgment was respited as to him, upon a doubt whether sentence for transportation for 14 years can be given against him upon the statute of the 4 *G.* in regard the principal felon is found guilty of petty larceny only. And at a meeting of the judges to consider of this doubt, they were all of opinion, that no judgment can be given against *Evans* on this verdict. For tho' the act is express, that persons convicted of buying or receiving stolen goods, knowing them to be stolen, shall be transported for 14 years, yet still it must mean persons legally convicted, persons convicted as accessories after the fact under the statutes of the 3 *W.* and 5 *An.* But this man ought to have been acquitted, the principal felon being convicted of petty larceny only. And indeed the indictment against *Avery* being for petty larceny, *Evans* ought not to have been put upon his trial. For the acts which make receivers of stolen goods knowingly, accessories to the felony, must be understood to make them accessories in such cases only, where by law an accessory may be; and there can be no accessory to petty larceny. Accordingly, at the next sessions, *Evans* was discharged.

Fol. 74.

4. And

4. And notwithstanding that regularly the accessory cannot be tried, till the principal be convicted, yet by the 5 *An. c. 31.* it is enacted, that if the principal felon cannot be taken, so as to be prosecuted and convicted, yet nevertheless the buyer and receiver of stolen goods may be prosecuted as for a misdemeanor, and punished by fine and imprisonment, or other such corporal punishment as the court shall think fit; which shall exempt him from being punished as accessory, if the principal shall be afterwards taken and convicted. *f. 6.*

5. And by the 29 *G. 2. c. 30.* it is enacted as follows:

Whereas the pernicious practice of stealing lead, iron, copper, brass, bell-metal, and solder, fixed to, or lying or being in or upon houses, outhouses, mills, warehouses, workshops, and other buildings, areas, vaults, yards, gardens, orchards, or other places; and also the stealing of such materials from ships, boats, and other vessels, and from off wharfs, keys, and other places, is become a great evil, by reason of the difficulty in apprehending and convicting the thieves, and in discovering the buyers and receivers; it is therefore enacted, that every person who shall buy or receive any of the same, knowing the same to be stolen or unlawfully come by, or shall privately buy or receive any stolen lead, iron, copper, brass, bell-metal, or solder, by suffering any door, window, or shutter to be left open or unfastened, between sun-setting and sun-rising, for that purpose; or shall buy or receive any of the same at any time in any clandestine manner; shall, on conviction by due course of law, altho' the principal felon hath not been convicted, be transported for 14 years. *f. 1.*

And one justice on complaint on oath by any credible person, that there is cause to suspect that stolen lead, iron, copper, brass, bell-metal, or solder, is concealed in any dwelling house, outhouse, yard, garden, or other place, may by his warrant cause such place to be searched in the day time; and if any of the same, suspected to be stolen, shall be found therein, may cause the same, and the person in whose house or other place the same shall be found, to be brought before two justices: And if such person shall not give an account, to the satisfaction of such justices, how he came by the same, or shall not in some convenient time to be set by the said justices produce the party of whom he bought or received the same, he shall be adjudged guilty of a misdemeanor. *f. 2.*

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And every constable within his constablewick, beadle within his district, and watchman whilst he is upon duty, shall apprehend or cause to be apprehended every person who may reasonably be suspected of having, carrying, or conveying, after sun-setting and before sun-rising, any of the said materials, suspected to be stolen or unlawfully come by; and the same, together with such person, as soon as conveniently may be, shall carry before two justices: And if the person so apprehended conveying the same, shall not produce the party from whom he bought or received the same, or some other credible witness to depose upon oath the sale or delivery thereof, or shall not give an account, to the satisfaction of such justices, how he came by the same, he shall be adjudged guilty of a misdemeanor. *f. 3.*

In either of which cases, two justices may cause the said materials to be deposited with the churchwardens or overseers of the poor where the same were found, or in any other convenient place, for any time not exceeding 30 days, and in the mean time may order the said churchwardens or overseers, or one of them, in every parish within the bills of mortality, to insert an advertisement in some publick paper; and elsewhere cause notice to be given by some publick crier, and by fixing on the church or chapel door notice describing such materials, and where deposited: And if any person can prove his property thereto, upon oath, to the satisfaction of such two justices, they shall order restitution thereof to the owner, after paying reasonable charges of removing, depositing, and giving publick notice of the same. And if at the end of the 30 days, no person shall prove his property thereto, the same shall be sold for the best price that can reasonably be had; and after deducting the charges as aforesaid, half of the money arising from such sale shall be given to the person apprehending, and half to the poor of the parish where the offence shall be committed (if it is known where), or else where the conviction shall be. *f. 4.*

And every person to whom any of the same shall be brought and offered to be sold, pawned, or delivered (there being reasonable cause to suspect that the same was stolen or unlawfully come by) shall apprehend, secure, and carry before a justice (having it in his power so to do) the person so bringing or offering the same, together with the said materials; and such person shall be dealt with, and the said materials shall be deposited and disposed of, as if he had been apprehended by the constable, beadle, or watchman:

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man : And if it shall appear upon the oath of any person, notwithstanding he was concerned in stealing the same, if corroborated with other credible circumstances, to the satisfaction of two justices, that there was reasonable cause to suspect that the same was stolen or unlawfully come by, and that the person to whom the same was brought or offered did not (having it in his power so to do) apprehend, secure, and carry before a justice the person who brought or offered the same ; then the person to whom the same was brought or offered, shall be adjudged guilty of a misdemeanor. *f. 5.*

And persons for the two former misdemeanors, in having or carrying any of the said goods, shall forfeit for the first offence 40 s. for the second 4 l. and for every subsequent offence 6 l. and for the other misdemeanor, in not carrying a suspected person before a justice, shall forfeit for the first offence 20 s. for the second 40 s. and for every subsequent offence 4 l. by distress ; half to the informer, and half to the overseers for the use of the poor where the offence was committed (if known) or otherwise, where the conviction shall be. And if no sufficient distress shall be found, then to be committed to the common gaol or other prison or house of correction for one month for the first offence, for the second two months, and for every subsequent offence till discharged by order of sessions. *f. 6.*

The conviction to be on parchment, and to be certified to the next sessions, and there filed ; in the form or to the effect following, *viz.*

Middlesex, **B**E it remembred, that on the ——— day of ——— to wit. ——— in the year ——— A. O. was convicted before us ——— of the justices of the peace for ——— of a misdemeanor, in having in his possession lead, iron, copper, brass, bell-metal, or solder, suspected to be stolen or unlawfully come by, and not producing the party or parties of whom he bought or received the same, nor giving a satisfactory account how he came by the same [or, in having, carrying, or conveying of lead, iron, copper, brass, bell-metal, or solder, suspected to be stolen or unlawfully come by, and not producing the party or parties from whom he bought or received the same, nor any credible witness to depose upon oath the sale or delivery thereof, and not giving a satisfactory account how he came by the same ; or, of neglecting to apprehend and secure the person who brought and offered to pawn, sell, or deliver lead, iron, copper, brass, bell-metal, or solder, suspected to be stolen or unlawfully

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unlawfully come by; as the case shall be:] Given under our hands and seals the day and year aforesaid.

Which conviction shall not be liable to be removed by certiorari, but shall be final to all intents and purposes.

f. 7.

And if any person being out of prison, shall commit any felony by stealing any of the said materials, and afterwards discover two or more persons who shall buy or receive any of the same, knowing the same to be stolen, so as two or more be convicted, he shall have a pardon, which shall also be a bar to an appeal. *f. 8.*

And if any person shall be concerned in stealing any of the same, and shall afterwards, being out of prison discover any person to whom he offered to sell, pawn, or deliver the same, so as he be convicted of such misdemeanor; he shall not be liable to be prosecuted for such stealing. *f. 9.*

But this shall not repeal any former law for the punishment of such offenders; and persons punished by this act, shall not for the same offence be prosecuted by any such former law. *f. 11.*

IX. Offering goods suspected to be stolen, to be pawned or sold.

By the 30th G. 2. c. 24. If any person who shall offer by way of pawn, pledge, exchange, or sale, any goods, shall not be able or shall refuse to give a satisfactory account of himself, or of the means by which he became possessed thereof; or if there shall be any other reason to suspect that such goods are stolen or otherwise illegally or clandestinely obtained, it shall be lawful for any person, his servants or agents, to whom the same shall be offered, to seize and detain such person and the said goods, and to deliver him as soon as conveniently may be into the custody of the constable or other peace officer, who shall immediately convey such person and the said goods before a justice; and if such justice shall upon examination and inquiry have cause to suspect that the said goods were stolen, or illegally or clandestinely obtained, he may commit him to safe custody for any time not exceeding six days in order to be further examined; and if upon either of the said examinations it shall appear to the satisfaction of such justice, that the said goods were stolen,

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or illegally or clandestinely obtained, he shall commit the offence to the common gaol or house of correction, there to be dealt with according to law. *f. 7.*

Provided, that if such goods so seized and detained as aforesaid shall afterwards appear to be the property of the person who offered the same to be pawned, exchanged or sold, or that he was authorized by the owner thereof to pawn, exchange or sell the same; yet nevertheless the person who shall so seize or detain the party who offered the said goods, shall be indemnified for having so done. *f. 8.*

X. Advertisiing or receiving a reward for helping to stolen goods.

By the 25 G. 2. c. 36. If any person shall publicly advertise a reward, with no questions asked, for the return of things stolen or lost, or shall make use of words therein purporting that such reward shall be given, without seizing or making inquiry after the person producing such thing; or shall offer to return to any pawnbroker, or other the money lent thereon, or other reward for the return thereof; he, and also the printer and publisher of such advertisement, shall respectively forfeit 50*l.* with costs, to him who shall sue in six months.

And by the 4 G. c. 11. Wherever any person taketh money or other reward, directly or indirectly, under pretence, or upon account of helping any person to any stolen goods; he shall (unless he apprehend the felon, or cause him to be apprehended, and brought to trial, and give evidence against him) be guilty of felony in the same manner as if he had stolen the same. *f. 4.*

XI. Charges of prosecution and conviction how to be paid.

By the statutes of the 3 J. c. 10. and the 27 G. 2. c. 3. The offender, if able, shall pay his own charges for carrying to gaol, and of those who guard him thither; and if he is not able, then the treasurer shall pay the same out of the county rates; as is shewn more at large in title **Commitment.**

And by the 25 G. 2. c. 36. The court before whom any person hath been convicted of any grand or petit larceny,

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ceny, may at the prayer of the prosecutor, and on consideration of his circumstances, order the county treasurer to pay him such sum as they shall judge reasonable, not exceeding the expences he was put to in carrying on the prosecution, with a reasonable allowance for his time and trouble: and the clerk of assize, or of the peace, shall forthwith make out such order, and deliver the same to the prosecutor, on payment of 1 s. and the treasurer shall pay the same on sight; which shall be allowed in his accounts. *s. 11.*

And by the aforesaid act of the 27 G. 2. c. 3. When any poor person shall appear on his recognizance, in such case to give evidence, the court may allow him his reasonable charges; to be paid in like manner by the treasurer; the proper officer to have 6d. for making out the order. Except in *Middlesex*, where the same shall be paid by the overseers of the poor where the person was apprehended.

Warrant for larceny.

Westmorland. { To the constable of ———

FOrasmuch as A. I. of ——— in the county of ——— yeoman, hath this day made information and complaint upon oath before me ——— one of his majesty's justices of the peace for the said county, that this present day divers goods of him the said A. I. to wit, ——— have feloniously been stolen, taken and carried away from the house of him the said A. I. at ——— aforesaid in the county aforesaid, and that he hath just cause to suspect, and doth suspect that A. O. late of ——— yeoman, feloniously did steal, take, and carry away the same: These are therefore to command you forthwith to apprehend him the said A. O. and to bring him before me to answer unto the said information and complaint, and to be further dealt with according to law: Herein fail you not. Given under my hand and seal the ——— day of ——— in the year ———

Note; The form of a warrant to search for stolen goods is inserted under the title *Search warrant*.

Indictment

Indictment for grand or petit larceny in general.

Westmorland. **T**HE jurors for our lord the king upon their oath present, That A. O. late of _____ in the county of _____ labourer, on the _____ day of _____ in the _____ year of the reign of _____ with force and arms, at _____ in the county aforesaid, one linen sheet of the value of _____ of the goods and chattels of one A. I. then and there being, feloniously did steal, take, and carry away; against the peace of our said lord the king, his crown and dignity.

Indictment for picking of pockets, or otherwise privately stealing from the person.

Westmorland. **T**HE jurors for our lord the king upon their oath present, That A. O. late of _____ in the parish of _____ yeoman, on the _____ day of _____ in the _____ year of the reign of _____ with force and arms, at the parish aforesaid in the county aforesaid, one silver watch of the value of _____ of the goods and chattels of one A. I. from the person of the said A. I. subtilly, privily, craftily, and without the knowledge of the said A. I. then and there feloniously did steal, take and carry away; against the peace of our said lord the king, his crown and dignity.

Indictment for breaking a house in the day time, some person being therein.

Westmorland. **T**HE jurors for our lord the king upon their oath present, That A. O. late of _____ in the county of _____ labourer, on the _____ day of _____ in the _____ year of the reign of _____ at the hour of _____ in the afternoon of the same day, with force and arms, at _____ in the county of _____ the dwelling house of one A. I. there situate, (one B. I. wife of the said A. I. in the same house in the peace of God and of our said lord the king then being) feloniously did break and enter, and one silver spoon of the value of _____ of the goods and chattels of him the said A. I. then and there feloniously did steal, take, and carry away, and her the said B. I. then and there in bodily fear

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fear and danger of her life feloniously did put; against the peace of our said lord the king, his crown and dignity.

Indictment for breaking a house in the day time,
(no person being therein.)

Westmorland. **T**HE jurors for our lord the king upon their oath present, That A. O. late of _____ on the _____ day of _____ in the _____ year of the reign of _____ at the hour of _____ in the afternoon of the same day, with force and arms, at _____ in the county aforesaid, the dwelling house of one A. I. there situate, feloniously did break and enter, and one silver spoon of the value of _____ of the goods and chattels of him the said A. I. then and there feloniously did steal, take, and carry away; against the peace of our said lord the king, his crown and dignity.

Indictment for stealing of goods out of a shop, warehouse, coach-house, or stable.

Westmorland. **T**HE jurors for our lord the king upon their oath present, That A. O. late of _____ in the county aforesaid, labourer, on the _____ day of _____ in the _____ year of the reign of _____ with force and arms at _____ in the county aforesaid, one piece of cloth of the value of _____ of the goods and chattels of one A. I. in the shop of him the said A. I. then and there being found, then and there privately and feloniously did steal, take, and carry away; against the peace of our said lord the king, his crown and dignity.

Leather.

Concerning the duties on leather, see title *Excise*.

THERE are several statutes unrepealed, which were made before the first year of the reign of K. James the first, concerning leather; but the act made in that year

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year renders them all useless, the same being intended to reduce all the acts into one relating to that commodity; which same thing was attempted in that king's reign, with success, in divers other articles.

Therefore in this title I shall go no further back than the statute of the 1 J. c. 22. And to avoid abundance of repetitions, I will first insert the methods of recovering the several penalties, and will then proceed with this article in its several progresses, in the order of time, from the first slaying off the hide, to its being at last sold and manufactured in leather, or exported.

I. Of the penalties under this title.

II. Of hides before they come to the tanner.

III. Of the tanning of hides.

IV. Of the currying of hides.

V. Of the searching and sealing of leather.

VI. Of the triers of leather.

VII. Of the selling and registering of leather.

VIII. Of the manufacturing of leather, or exporting it.

IX. Importing of leather gloves or mitts.

I. Of the penalties under this title.

1. All forfeitures by the act of the 1 J. c. 22. not hereafter otherwise specially directed, shall be divided one third to the king, one third to him that shall sue, and one third to the city, town, or lord of the liberty. 1 J. c. 22. s. 46.

Money and goods forfeited by the 1 J. how to be distributed.

And all leather, shoes, or other things made of tanned or curried leather, seized and condemned by the triers hereafter mentioned, by the said statute of the 1 J. c. 22. if in London, shall be brought to Guildhall, and prized by indifferent persons, and the value thereof divided, one third to the seizor, one third to the chamber of London, and one third to such poor as the mayor and four aldermen shall appoint: If in any other city, town, or place, they shall be brought to the common hall of such town, or to some convenient and open place to be appointed by the lord of

the liberty where no common hall is, there to be prized as aforesaid, and the value divided, one third to the poor and in other deeds of charity after the discretion of the mayor or lord of the liberty, one third to the mayor for the use of the commonalty, or to the lord of the liberty where there is no mayor or other such like officer, and one third to the seisor. 1 *J. c. 22. f. 46.*

Forfeitures on
the 1 *J.* and on
the 9 *An.* how
to be recovered.

2. And the aforesaid forfeitures on the 1 *J.* may be sued for in any court of record, by action of debt, bill, plaint, or information, or otherwise. 1 *J. c. 22. f. 46.*

And likewise all justices of assize, justices of the peace, mayors, and stewards of leets, may inquire thereof in their sessions, leet, or law day, and hear and determine the same. 1 *J. c. 22. f. 50.*

And moreover by the 9 *An. c. 11.* Any two justices near where the forfeitures on the said act of the 9 *An.* shall be incurred, or offence committed, or where any offence shall be committed against the aforesaid act of 1 *J. c. 22.* may hear and determine the same; who shall on information or complaint, in three months after any seizure made, or offence committed, summon the party accused, and the witnesses; and on appearance or contempt in not appearing (on proof of notice given) shall proceed to examine witnesses on oath, and give judgment, and issue warrants for levying the penalties, and cause the distress to be sold, if not redeemed in six days. And if either party is not satisfied with the judgment, he may appeal to the next sessions, who shall determine the same, and in case of conviction, issue warrants for levying the penalties. *f. 36.*

Forfeitures on
the 13 & 14
C. 2. c. 7.

3. All forfeitures and sums by the act of the 13 & 14 C. 2. c. 7. shall be recovered in any court at *Westminster* or in any court of record in the city, town, county, or place where the offence shall be committed; to be distributed half to the king, and half to the informer. *f. 10.*

II. Of hides before they come to the tanner.

Gashing hides.

1. If any raw hide or calf skin shall wilfully or negligently be gashed or cut in slaying, or being gashed or cut shall be offered to sale; the butcher or other person who impaired the same or the person offering the same to sale, shall forfeit 2 s. 6 d. for every hide, and 1 s. for every calf skin, half to the poor of the parish where it is found or offered to sale, and half to him that shall sue. 9 *An. c. 11. f. 11.*

2. No

2. No butcher shall water any hide, except in *June*, *July*, and *August*; on pain of 3 s. 4 d. 1 *J. c. 22. f. 2.* Watering hides.

3. No butcher shall offer any hide to sale, being putrefied; on pain of 3 s. 4 d. 1 *J. c. 22. f. 2.* Rotten hides.

4. None but tanners shall buy any rough hide or skin (except salt hides for the use of ships); on pain of forfeiting the same, or the value thereof. 1 *J. c. 22. f. 7.* Who may buy hides.

5. No person shall forestall any hides, nor buy any but in open fair or market, unless of persons killing the beast for their own household, on pain of 6 s. 8 d. 1 *J. c. 22. f. 7.* Forestalling hides.

III. Of the tanning of hides.

1. No person shall be a tanner, but who hath served seven years, except the wife or such son of a tanner as hath used the trade four years, or the son or daughter of a tanner, or such person who shall marry such wife or daughter to whom he shall leave a tan house and fats; on pain of forfeiting all such leather by him tanned, or of which he shall receive any profit, or the value thereof. 1 *J. c. 22. f. 5.* Who may be a tanner.

No tanner shall be a butcher, on pain of 6 s. 8 d. a day. 1 *J. c. 22. f. 4.*

No tanner shall be of any craft exercised in the cutting or working of leather; on pain of forfeiting the same, or the value thereof. 1 *J. c. 22. f. 6.*

2. No person shall regrate or ingross any oaken bark; on pain of forfeiting the same, or the value thereof. 1 *J. c. 22. f. 19.* Oak bark.

No person shall fell any oak trees meet to be barked, where bark is worth 2 s. a cart load, over and above the charges of barking and pilling (except timber for houses, ships or mills) but between *April 1.* and *June 30.* on pain of forfeiting the same, or double value thereof. 1 *J. c. 22. f. 20.*

No purveyor of timber shall sell for the king's use, any oak timber tree meet to be barked, but in barking time (except for the king's houses or ships): or shall receive any profit by any lops, tops, or bark of trees to be taken by them; or shall take or dispose from the owner, any more of any tree so to be taken, than only the timber thereof to be used only about the king's buildings or ships: on pain of forfeiting to the party grieved, for every tree, and for the lops, tops, and bark of every tree, 40 s. And the owner may with-hold any bark, lop, or top, any com-

Manner of tanning.

mission or other matter notwithstanding. 1 *J. c. 22. f. 21.*

3. No tanner shall suffer any hide or skin to lie in the limes till they be overlimed; nor shall put them into any tan fats, before the lime be perfectly sokened and wrought out of them; nor shall use in the tanning thereof any thing but ash bark, oak bark, tap wort, malt, meal, lime, culver dung, or hen dung; nor shall suffer it to lie wet till it be frozen; nor shall dry it by the fire, or summer sun; nor shall tan any hide or skin putrefied or rotten; nor shall suffer the hides for utter sole leather to lie in the woozes less than 12 months, nor the hides for upper leathers less than nine months; nor shall negligently work the hides in the woozes, but shall renew and make strong their woozes, as often as shall be requisite; nor shall put to sale any leather tanned in any other sort than by this statute is limited: on pain of forfeiting every hide or skin tanned and offered to sale contrary to this act, or the value thereof. 1 *J. c. 22. f. 11.*

No tanner shall raise with any mixtures any hide to be converted to backs, bend leather, clouting leather or any other sole leather, except they be for largeness, state, and growth fit for that purpose, to be tried by the triers hereafter mentioned; on pain of forfeiting the same. 1 *J. c. 22. f. 12, 13.*

No person shall set the fats in tan hills, or other places, where the woozes or leather may take any unkind heats; or shall put any leather into any hot or warm woozes; or shall tan any hide or skin with any hot or warm woozes; on pain of 10 l. and the pillory on three market days in the next market town. 1 *J. c. 22. f. 16, 17.*

If any tanner or other person shall shave or cause to be shaved any hide or calf skin, before it be thoroughly tanned, whereby it shall be impaired; he shall forfeit the same or the value, half to the king, and half to him that shall sue. 9 *An. c. 11. f. 12.*

Every tanner, who shall shave, cut, and rake the upper leather hides all over, or the necks of their backs and butts; shall forfeit the same, or the value thereof, and the searchers and sealers hereafter mentioned may seize them. 13 & 14 *C. 2. c. 7. f. 8.*

If any tanner shall offer to sale any leather not thoroughly tanned or dried, to the satisfaction of the triers; he shall forfeit so much as shall be so deficient, whether whole hides or part thereof. 1 *J. c. 22. f. 15.*

IV. Of

IV. Of the currying of hides.

1. No currier shall be a tanner, shoemaker, butcher, or Who may be other artificer using cutting of leather; on pain of for- currier. feiting 6 s. 8 d. for every hide he shall curry during the time that he shall occupy any of the said misteries. 1 *J. c. 22. f. 25.*

2. Every artificer dealing in cutting of leather, or Leather delivered to the currier. other person, who shall buy any red tanned leather, with- in *London*, or three miles thereof, shall before the next market day for sale of leather, give notice thereof to one of the carriers company, and in three weeks after shall deliver the leather so bought (except what shall be used for soles without being curried, tallowed, or dressed) to the said currier, to be curried, tallowed, or dressed; on pain of 6 s. 8 d. for every back, butt, hide, or calf skin. 13 *G. 14 C. 2. c. 7. f. 13.*

3. No currier shall refuse to curry any leather to him brought by any artificer being a cutter of leather, and bringing with him sufficient stuff for the perfect liquoring the same, with as convenient speed as may be, not exceeding eight days in summer, and 16 in winter, in the presence of the said artificer, if he will be present, otherwise in his absence; on pain of forfeiting to the party grieved for every hide or piece of leather not in this manner curried, and well and speedily dressed, 10 s. 1 *J. c. 22. f. 26.* In what time he shall curry it.

And by the 12 *G. 2. c. 25.* If any currier shall refuse to curry any leather brought or sent to him by any person dealing or working in leather, or shall neglect to curry the same in 16 days between *Sept. 28.* and *March 25.* and in 8 days in the remaining part of the year; he shall, on conviction before one justice, on the oath of one witness, forfeit any sum not exceeding 5 l. by distress; half to the informer and half to the poor. Persons aggrieved may appeal to the next sessions. *f. 4, 5, 6.*

4. No person shall curry any leather in the house of any Manner of cur- ryng. shoemaker or other person, but only in his own house situate in a corporate or market town; nor shall curry any leather except it be perfectly tanned; nor shall curry any hide or skin being not thoroughly dry after his wet season; in which wet season, he shall not use any stale urine, or any other deceitful or subtle mixture or means to hurt the same; nor shall curry any leather meet for utter sole leather, with any other stuff than with hard tal- low,

low, nor with any less of that than the leather will receive; nor shall curry any leather meet for over leather, and inner soles, but with sufficient stuff, being fresh and not salt, and thoroughly liquored till it can receive no more; nor shall burn or scald any hide or leather in the currying; nor shall shave any leather too thin, nor shall gash or hurt any leather in the shaving, or by any other means; but shall work the same sufficiently in all points: on pain of forfeiting for every such offence (other than in gashing or hurting in shaving) 6 s. 8 d. and the value of such skin or hide marred by his evil workmanship; and for every offence in gashing or hurting by shaving, double so much to the party grieved as the leather shall be impaired thereby, by the judgment of the wardens of the curriers, and of the warden of the company whereof the party grieved shall be. 1 *J. c. 22. f. 22.*

V. Of the searching and sealing of leather.

Searchers and
sealers in Lon-
don.

1. The mayor and aldermen of *London* (on pain of 40 l. for every year they make default, half to the king, and half to him that shall sue) shall yearly appoint 8 freemen of some of the companies of cordwainers, curriers, sadlers, or girdlers (whereof one shall be a sealer, and keep a seal for the sealing of leather); who shall be sworn before them to do their office truly: And they shall search and view all tanned leather brought to market, whether it is thoroughly tanned and tried; and if it is, shall seal the same. 1 *J. c. 22. f. 31.*

And four of the said searchers shall be removed at the end of the year, and four new ones chosen; and no one shall continue in the office above two years together, nor shall be employed again till after the end of three years; on pain of 10 l. a month. 1 *J. c. 22. f. 36.*

In other places.

2. And all mayors, and lords of liberties, fairs, and markets, out of the compass of three miles from *London*, shall (on like pain of 40 l.) appoint and swear yearly two, three, or more honest and skilful men, to be searchers within their precincts; who shall search as often as they shall think good, or need shall be, and shall seal what they find sufficient: And if they find any leather offered to be sold, or brought to be sealed, which shall be insufficiently tanned or curried, or any boots, shoes, bridles, or other thing made of tanned or curried leather, insufficiently tanned, curried, or wrought, they may seize and keep

keep the same, till they be tried by the triers. 1 *J. c.* 22. *f.* 32.

3. The wardens of the curriers shall search and try all such curried leather as shall be brought to any of their company to be curried, and shall with a seal therefore to be prepared, with convenient speed, not exceeding one day after the currying and request made, seal such leather as they shall find sufficiently curried; taking for every hide so sealed after the rate of one penny for the dicker, and for every six dozen of calf skins one penny, to be paid by the currier: on pain of forfeiture for every hide not searched and sealed 6 s. 8 d. 1 *J. c.* 22. 27. Fee for sealing.

But they shall not visit, search, or seize any leather, hide, or skin, but such as shall be curried or dressed within *London* or three miles thereof, by some member of their own company, nor in any other place but in the open market, or in the shops, houses, or warehouses of such curriers. 1 *W. sess.* 1. c. 33. *f.* 4.

4. If any searcher or sealer shall refuse with convenient speed to seal any leather which is sufficient, or do allow that which is insufficient; he shall forfeit 40 s. If he shall receive any bribe, or exact any other fee than by this act is appointed, he shall forfeit 20 l. And if he shall refuse to execute his office, he shall forfeit 10 l. 1 *J. c.* 22. *f.* 37. Penalty on the searcher or sealer misbehaving.

5. If any person shall deny, or withstand, or not suffer the searching or seizing of insufficient wares, he shall forfeit 5 l. 1 *J. c.* 22. *f.* 40. Penalty on hindring the searcher.

VI. Of the triers of leather.

1. The mayor of *London* (on pain of 5 l. half to the king, and half to him that shall sue) shall within six days after notice given to him of any seizure of any leather, red and unwrought, appoint six triers, two of the cordwainers company; two of the curriers, and two of the tanners using *Leadenhall* market; who upon their oaths to be taken before him, shall on the second or third market day for leather (to be holden on *Tuesday*, 13 & 14 *C.* 2. c. 7. *f.* 9.) in the afternoon, try whether the same be sufficient or not. 1 *J. c.* 22. *f.* 33, 35. Triers in *London*.

2. Every other mayor, or lord of liberty, out of the compass of three miles from *London* within whose precincts any seizure of any tanned leather, red or curried, or of any shoes, boots, or other wares made of tanned leather, shall be, shall (on like pain) with all convenient speed In other places.

speed after notice given to him of such seizure, appoint six honest and expert men, to try whether the same be sufficient or not; the same trial to be openly on some market day, and within 15 at the farthest from the time of the seizure, upon the oaths of the said triers. 1 *J. c.* 22.

f. 34.

Triers misbehaving.

3. Triers not doing their duty, shall forfeit 5*l.* 1 *J. c.* 22. *f.* 35.

VII. Of the selling and registering of leather.

Selling unsealed.

1. No person shall put to sale any tanned leather red and unwrought, but in open fair or market, unless the same hath been first searched and sealed; nor shall offer to sale any tanned leather red and unwrought before it be searched and sealed; on pain of forfeiting the same, or the value thereof, and also for every hide or piece 6*s.* 8*d.* and for every dozen of calves skins 3*s.* 4*d.* 1 *J. c.* 22. *f.* 14.

But no person shall incur any penalty for selling or buying any sheep skins unsearched or unsealed. 4 *J. c.* 6. *f.* 2.

Where to be sold and registred.

2. All red tanned leather shall be bought only in the open fair or market, and not in any house, yard, shop, or other place; on pain of forfeiting the same, or the value thereof, and the contract to be void. And all such leather shall be searched and sealed before sale, and on sale shall be registred, and an entry made both by the buyer and seller, both being present, and their names and dwellings entred into the book of the register; on pain that every such buyer or seller who shall make default, shall forfeit the same or the value thereof. 13 & 14 *C. 2. c.* 7. *f.* 4.

Fee for registering.

3. Searchers and sealers shall keep a register, wherein they shall enter all bargains made for leather, hides, or skins, during the fair or market, being thereunto required by the buyer or seller, with the prices; taking for searching, sealing, and registering of every ten hides, backs, or butts, of the seller, 2*d.* and so after the same rate; and for every six dozen of calves skins or sheep skins, 2*d.* and of the buyer after the same rate. 1 *J. c.* 22. *f.* 41.

Registering in London.

4. All red tanned leather which shall be brought into London, or within three miles thereof, shall be brought to *Leadenhall* before it be housed, and there viewed whether it hath been searched or sealed, and shall be registred by the searchers, with half such fees to be paid for such of the said tanned leather as shall be bought out of London,

or

or three miles compass from the same, and searched and sealed before it be brought within the city; on pain that every person housing or not bringing his leather to *Leaden-hall* as aforesaid, shall forfeit for every hide or skin 6s. 8d.

1 *J. c. 22. f. 38.*

5. By the 1 *J. c. 22.* No person shall buy any tanned leather unwrought, but who shall work the same into wares; on pain of forfeiting the same, or the value thereof. *f. 8.*

Buyer of leather
selling it again
unwrought.

But by the 12 *G. 2. c. 25.* All persons who deal or work in leather, may buy all sorts of tanned leather in open fair or market, whether curried or uncurried, being first searched and sealed; and may cut and sell the same in any small pieces in their open shops. *f. 1.*

And by the 1 *W. 1. c. 33.* All dealers or workers in leather may buy all sorts of red tanned leather in open fair or market, whether curried or uncurried, being first searched and sealed, and may sell it again in their open shops, or cut and convert it into other made ware.

f. 5.

6. Within *London*, or three miles thereof, no person shall sell any wares appertaining to the mystery of any artificer, cutting leather, but only in open shop, common fair or market, whereby the wardens may have search thereof; on pain of forfeiting the same, and also 10s.

Where it may be
sold in *London*.

1 *J. c. 22. f. 45.*

VIII. Of the manufaturing of leather, or exporting it.

1. No shoemaker shall make any boots or shoes, or any part of them, of *English* leather wet curried (other than deer skins, calves skins, or goat skins made and dressed like *Spanish* leather), but of leather well and truly tanned and curried in manner aforesaid, or of leather well and truly tanned only, and well sewed, without mixing overleathers that is to say, part being neats leather, and part calves leather; nor shall put into any part of any shoes or boots, any leather made of a sheep skin, bull hide, or horse hide; nor in the upper leather of any shoes, or into the nether part of any boots (the inner part of the shoe only excepted) any part of any hide from which the sole leather is cut, called the wombs, necks, shanks, flank, powle, or cheek; nor shall put into the utter sole any other leather, than the best of the ox or steer hide; nor into the inner sole, any other leather than the wombs, neck, powle, or cheek; nor into the trefwells of the double

Shoemaker's
duty.

ble soled shoes, other than the flanks of any the hides aforesaid; nor shall make or put to sale between *September 30.* and *April 20.* any shoes or boots meet for any person above four years old, wherein shall be any dry *English* leather, other than calves skins or goats skins made or dressed like *Spanish* leather; on pain of forfeiting for every pair of shoes or boots 3 s. 4 d. and the value thereof. 1 *J. c. 22. f. 28.*

Artificers working bad leather.

2. And if any shoemaker, sadler, or other artificer using of leather, do make any wares of any tanned leather insufficiently tanned, or of tanned and curried leather being not sufficiently tanned and curried; he shall forfeit the same, and the value thereof. 1 *J. c. 22. f. 44.*

Shoemakers in London,

3. If any shoemaker or cobbler within *London* or three miles thereof, shall put any tanned leather into any boots or shoes, or other things made of tanned leather, which shall not be well and perfectly tanned; or do put any curried leather into boots or shoes or other things made of leather, which shall not be sufficiently tanned and curried, and also sealed; he shall forfeit the same, and the value thereof. 1 *J. c. 22. f. 44.*

Search in London for insufficient wares.

4. And the master and wardens of the misteries of cordwainers, curriers, girdlers, and sadlers of *London* (on pain of 40 l. for every year they make default, half to the king and half to him that shall sue) shall once a quarter or oftner make search and view of all boots and shoes, and other wares made of tanned leather, within three miles of *London*, and if they are not truly wrought, they may seize and carry the same to their several common halls. 1 *J. c. 22. f. 29.*

And by the 1 *W. sess. 1. c. 33. f. 3.* Every hide, skin, or piece of tanned leather shaved or liquored, of what colour soever, with any lawful liquor or dressing, and being well and truly curried, shall be deemed ware within the said statute of the 1 *J. c. 22.*

Exportation.

5. All sorts of leather and skins, tanned or dressed, may be exported. 20 *C. 2. c. 5.* 9 *An. c. 6. f. 4.*

IX. Importing of leather gloves or mitts:

1. For encouragement of the importation of foreign kid and lamb skins unmanufactured; if any foreign manufactured leather gloves or mitts shall be imported, the same shall be forfeited, and may be searched for and seized by any officer of the customs or excise: And every person importing the same, or aiding therein; or, being a vender

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vendor or retailer of any kind of leather gloves or mitts, in whose possession any such foreign manufactured leather gloves or mitts shall be found; or who shall sell or expose the same to sale; or conceal the same with intent to prevent the forfeiture; shall over and above the forfeiture of the said goods, and all interest he may have therein, forfeit also 200 *l.* with double costs. 6 G. 3. c. 19.

f. 1.

2. If the seizure shall be out of the limits of the bills of mortality, and not exceed the value of 20 *l.* two justices may hear and determine the said cause of seizure of the said goods. *f. 2.*

3. After condemnation, the same to be publickly sold to the best advantage, by the candle, for exportation; and not to be delivered out, till security be given that the same shall be exported, and not landed in any part of his majesty's dominion. *f. 3.*

4. Half the produce arising by the sale, to go to the king; and half to the officer who shall seize and secure the same. *id.*

5. And if any doubt shall arise where the same were manufactured, the proof shall lie on the person in whose possession they shall be found, and not on the prosecutor; and if no proof be given that they were manufactured in Great Britain, they shall without any further proceeding be taken to have been manufactured out of Great Britain. *f. 4.*

6. Provided, that if any person, in whose possession such goods shall be found (such person not importing or concealing the same) shall discover upon oath, before one justice, the person who sold the same to him, so as such vendor may be convicted; he shall be indemnified. *f. 5.*

7. The said pecuniary forfeitures to be sued for in the courts at Westminster: and to be distributed half to the king, and half to the officer who shall inform and sue. *f. 6.*

8. But if the officers of the customs or excise shall neglect or refuse, for one calendar month after condemnation, to prosecute for the pecuniary penalty; any other person may sue for the same, to be distributed as aforesaid, half to the king, and half to him that shall sue. *f. 7.*

9. Provided, that nothing herein shall extend to subject any wearer of such gloves or mitts, as part of his dress only, to any forfeiture or pecuniary penalty. *f. 8.*

Lecturer.

Lecturer.

BY the 13 & 14 C. 2. c. 4. Lecturers in churches, unlicensed, and not conforming to the liturgy, shall be disabled, and shall also suffer three months imprisonment in the common gaol; and two justices (or the mayor in a town corporate) shall, upon certificate from the ordinary commit them accordingly. *f.* 19—23.

Leet.

Meaning of the word.

1. **LEET** (*leth, læthe, lathe*) is of *Saxon* original, and seemeth to be no other than the court of the *lathe*; as the county court is the court of the county. For in ancient times the counties were subdivided into lathes, rapes, wapentakes, hundreds, and the like. And the sheriff twice a year performed his *tourn* or perambulation, for the execution of justice throughout the county. Afterwards this power of holding courts was granted to divers great men, within certain districts. And from hence, these courts, holden within particular parts of the county, have descended unto us without variation, under the name of the *leet, leth, or lathe* courts.

Leet, what.

2. The court *leet* is a court of record, having the same jurisdiction within some particular precinct, which the sheriff's *torn* hath in the county. *2 Haw. 72.*

Leet derived from the torn.

3. For the leet, or view of frankpledge, was by the king (for ease of the people) divided, and derived from the torn; who did grant to the lords to have the view of the tenants and resiants within their manors; so as the tenants and resiants should have the same justice that they had before in the torn done unto them at their own doors, without any charge or loss of time. *2 Inst. 71.*

Frankpledge.

4. The institution hereof for keeping of the king's peace, was, that every freeman at his age of 12 years (except peers, clergymen, and tenants in ancient demesne, *2 Haw. 57.*) should in the leet, if he were in any leet, or in the torn if he were not in any leet, take the oath of allegiance to the king; and that pledges or sureties should be found for his truth to the king, and to all his

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his people, or else to be kept in prison: This frankpledge consisted most commonly of ten households, which the Saxons called *theothung*, in the north parts they call them *tenmentale*, in other places of England *tithing*; whereof the masters of the nine families who were bound, were of the Saxons called *freoborh*, which in some places is to this day called *freeborrow*, that is, free surety, or frankpledge, and the master of the tenth household was called *theothungmon*, to this day in the west called *tithingmen*, and *tithenheofod*, and *freoborher*, that is *capitalis plegius*, chief pledge; and these ten masters of families, were bound one for another's family, that each man of their several families should stand to the law, or if he were not forthcoming, that they should answer for the injury or offence by him committed. And the precinct of this frankpledge was called *decenna*, because it consisted most commonly of ten households; and every man of those several households, for whom the pledge or surety was taken, were called *deoenarii*; which names are continued as shadows of antiquity to this day. 2 *Inst.* 73.

And by the due execution of this law, such peace was universally holden within this realm, as no injuries, homicides, robberies, thefts, riots, tumults, or other offences were committed; so as a man with a white wand might safely have ridden before the conquest, with much money about him, without any weapon, throughout England. 2 *Inst.* 73.

But no person is obliged to appear at any leet, within the precincts whereof he doth not reside. 2 *Haw.* 57.

5. He that claims a leet by charter, must hold it on the days prescribed by the charter; he that claims it by prescription, may claim to hold it once or twice every year, at any such days as shall upon reasonable warning be appointed, if the usage hath been so that it hath been kept at uncertain times; or else it ought to be kept at such certain days and times, as by prescription hath been certainly used. 2 *Inst.* 72.

6. If a nuisance done within the jurisdiction of the leet, be not presented in the leet, the sheriff in his torn cannot inquire of it; for that which is within the precinct of the leet is exempt from the torn, otherwise there might be a double charge; but in that case a writ may be directed to the sheriff to inquire thereof. 4 *Inst.* 261.

7. It seems that a court leet is so far intrusted with the keeping of the peace within its own precinct, that the steward of it may by recognizance bind any person to the peace,

peace, who shall make an affray in his presence, sitting the court, or may commit him to ward, either for want of sureties, or by way of punishment, without demanding any sureties of him, in which case he may afterwards impose a fine according to his discretion. *2 Haw. 4.*

What felonies
are cognizable in
the leet.

8. The leet hath power to receive indictments of felonies at the common law, but not of felonies by act of parliament, unless specially limited thereto. *2 H. H. 71.*

Other publick
offences.

9. Furthermore, this court hath cognizance of a great number of offences, both by the common law, and by statute; as for instance, tipling in alehouses; assaults whereby bloodshed ensueth; common barators; bawdy houses; defects in bridges and highways; destroyers of ancient boundaries; bakers; brewers; butchers; curriers; cottagers and inmates; deciners or suitors not appearing in the leet; estrays; waifs, and treasure trove; eave droppers; forestallers, regrators, ingrossers; destroyers of game; gamesters; hedge breakers; neglectors of hue and cry; higlers; innholders; millers; night walkers; common nuisances; want of pillory and stocks, and common pounds; rescous; scolds; shoemakers; searchers of leather; stoned horses of two years old put on the common; victuallers; constables neglecting watch and ward; weights and measures; and many others by particular statutes. *Wood. b. 4. c. 1.*

Private offences.

10. But a man cannot be presented in the leet for surcharging the common, or for digging in the common; because this concerns the private, not the publick interest, and belongs rather to the court baron to inquire of it. *Wood. b. 4. c. 1.*

Within what
time offences
are cognizable.
Constables chosen
in the leet.
Jurors.

11. Also no offence is cognizable in the leet, unless it arose since the holding of the last court. *2 Haw. 66.*

12. The constables of common right are to be chosen and sworn in the leet or torn. *2 Haw. 62.*

13. The leet seems not to be within the equity of the statute of 1 R. 3. which requires that the jurors in the torn shall have 20 s. a year freehold, or 26 s. 8 d. copyhold or customary; for it is said, that any person happening to be present at the leet, or to be riding by the place where it is holden, may for the want of jurors be compelled by the steward to be sworn, whether he be resident within the leet or not; by which it seems to be implied, that any person whatsoever is capable of being put upon the jury in a court leet. *2 Haw. 69.*

14. Indictments in the leet ought to be by roll indented, ^{Indictments to be indented.} one to remain with the indictors, and the other with the steward, to prevent imbezilling. 2 Haw. 69.

15. Although the leet may receive indictments of felony, ^{Indictments of felonies, how to be certified.} yet it cannot hear and determine them, but must send them to the gaol delivery, there to be heard and determined, if the offenders are in custody; or remove them by certiorari into the king's bench, that process may be made upon them to outlawry. 2 H. H. 71.

16. It seems to be agreed, that a presentment in the leet ^{Traverse.} of any offence within the jurisdiction of the court, being neither capital nor concerning any freehold, subjects the party to a *fine* or *amercement* without any farther proceeding, and admits of no traverse to the truth of it: But if it touch the party's freehold, it may be removed into the king's bench, and there traversed. 1 Haw. 217, 219. 2 Haw. 71.

17. A *fine* is a pecuniary punishment, assessed by the ^{Fine.} steward, for an offence or contempt committed in court, or by publick officers out of court, in administration of their offices; a fine is always assessed by the steward, and is not to be assessed, though sometimes it is called an *amercement*; and the lord by a special warrant to the bailiff may distrain, or he may have an action of debt, for a fine imposed; but he cannot imprison: But this is the only court that can fine and not imprison. Wood. b. 4. c. 1. 2 Haw. 61.

18. An *amercement* is a pecuniary punishment, assessed ^{Amercement.} by the homage or jury, for offences committed out of court by private persons, to be mitigated by assurers (from *asseurer*, to tax), who are to affirm the reasonableness thereof upon their oaths, where no express penalty is inflicted by statute; and for this also the lord may have an action of debt, or may distrain of common right, and impound the distress, or sell it at his pleasure, but cannot imprison for it. Wood. b. 4. c. 1.

19. And upon presentment of a nuisance, the steward ^{Amercement how recovered.} may either amerce the person, and order him also to remove it by such a day, under pain of forfeiting a certain sum; or he may order him to remove it, under such a pain, without amercing him at all: And on presentment at another court, that he hath not removed such nuisance (having had notice thereof) the pain may be recovered by distress or action of debt, without farther proceeding. 2 Haw. 61.

20. It

By-laws.

20. It seemeth that of common right any court leet, with the assent of the tenants, may make by-laws under certain penalties, in relation to matters properly within the cognizance of such court, as the reparation of the highways, and the like: And also a court baron by custom may make by-laws, for the well regulating of commons, and such like private matters. And therefore where a court leet and baron are holden together, as they usually are, it seems, that what is transacted therein, in relation to publick matters, shall be applied to the jurisdiction of the court leet, and what is done in relation to private matters, shall be intended to be done by the court baron. 2 *Haw.* 68.

Pillory and
stocks.

21. The lord of the leet ought to have a pillory and tumbrel; and for want thereof, he may be fined, or his liberty seized. *Cro. El.* 698.

But the stocks are to be provided at the charge of the town; for originally they were not to punish, but to keep men in hold. *Wood. b. 4. c. 1.*

Business devolved
on the sessions.

22. But the business of the leet hath declined for many years; and is devolved on the quarter sessions.

Letter.

BY the 9 *G. c.* 22. and 27 *G. 2. c.* 15. If any person shall knowingly send any letter, without any name subscribed thereto, or signed with a fictitious name, demanding money, or other valuable thing; or threatening to kill or murder any of his majesty's subjects, or to burn their houses, outhouses, barns, stacks of corn or grain, hay or straw; tho' no money or venison or other valuable thing be demanded by such letter; or shall rescue any person in custody for such offence; he shall be guilty of felony without benefit of clergy.

Seditious or defamatory letters, belong to title *Libel*.

Lewdness.

1. IF any offend their brethren by adultery, whoredom, incest, or any other uncleanness, the churchwardens shall present them to the ordinary, and they shall not be admitted to the holy communion, till they be reformed. *Can. 109.*

2. But altho' lewdness be properly punishable by the ecclesiastical law, yet the offence of keeping a bawdy-house cometh also under the cognizance of the law temporal, as a common nuisance, not only in respect of its endangering the publick peace, by drawing together dissolute and debauched persons, but also in respect of its apparent tendency to corrupt the manners of both sexes. *3 Inst. 205. 1 Haw. 196.*

3. And in general, all open lewdness grossly scandalous is punishable upon indictment at the common law. *1 Haw. 7.*

4. And offenders of this kind are punishable not only with fine and imprisonment, but also with such infamous punishment as to the court in discretion shall seem proper. *1 Haw. 196.*

5. And upon information given to a constable, that a man and woman are in adultery or fornication together, or that a man and woman of evil report are gone to a suspected house together in the night, the officer may take company with him, and if he find them so, he may carry them before a justice, to find sureties of the good behaviour. *Dalt. c. 124. 2 Haw. 61.*

6. For it seems always to have been the better opinion, that a man may be bound to his good behaviour, for haunting bawdy houses with women of bad fame, as also for keeping bad women in his own house. *1 Haw. 132.*

7. And a wife may be indicted together with her husband and condemned to the pillory with him, for keeping a bawdy house; for this is an offence as to the government of the house; in which the wife has a principal share; and also such an offence as may generally be presumed to be managed by the intrigues of her sex. *1 Haw. 2.*

8. And if a wife go away, and remain with an adulterer without being reconciled to her husband, she shall lose her dower. *2 Inst. 435.*

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9. But

9. But if a person is indicted for frequenting a bawdy house, it must appear that he knew it to be such a house; and it must be expressly alledged that it is a bawdy house, and not that it is suspected to be so. *Wood. b. 3. c. 3.*

10. On an indictment for keeping a disorderly house, a female witness swore, that she was a sailor's wife, and during her husband's absence out of the realm she had often prostituted herself there: Lord *Raymond* said, it was an odious piece of evidence and ought not to be heard. *Barl. Bawdy-h.*

11. But it is said a woman cannot be indicted for being a bawd generally, for that the bare solicitation of chastity is not indictable. *1 Haw. 196. 1 Salk. 382.*

Indictment for keeping a disorderly house.

Westmorland. **T**HE jurors for our lord the king upon their oath present, that A. O. late of— in their said county, labourer, on the— day of— in the— year of the reign of— and at divers other times as well before as after, with force and arms at— aforesaid, in the county aforesaid, did keep and maintain, and yet doth keep and maintain, a certain common, ill-governed and disorderly house, and in the said house, for his own lucre and gain, certain evil and ill-disposed persons, as well men as women, of evil name and fame, and of dishonest conversation, to frequent and come together then, and the said divers other times, there unlawfully and wilfully did cause and procure; and the said men and women, in the said house, at unlawful times, as well in the night as in the day, then and the said other times, there to be and remain, drinking, tipling, whoring, and misbehaving themselves, unlawfully and wilfully did permit, and yet doth permit, to the great damage and common nuisance of all the subjects of our said lord the king, and against the peace of our said lord the king, his crown and dignity.

Libel.

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Libel.

- I. *What it is.*
- II. *Who are punishable for it.*
- III. *How punishable.*

I. *What it is.*

A Libel is a malicious defamation of any person, expressed either in printing or writing, signs or pictures, to asperse the reputation of one that is alive, or the memory of one that is dead. Wood. b. 3. c. 3.

A malicious defamation] And the scandal which is expressed in a scoffing and ironical manner, is as properly a malicious defamation, as that which is expressed in direct terms; as where a person proposes one to be imitated for his courage, who is known to be a great statesman, but no soldier; and another to be imitated for his learning, who is known to be a great general, but no scholar; and the like: Which kind of writing is as well understood to mean only to upbraid the parties with the want of these qualities, as if it had directly and expressly done so. **I** Haw. 194.

And from the same foundation it hath also been resolved, that a defamatory writing, expressing only one or two letters of a name, in such a manner, that from what goes before and follows after, it must needs be understood to signify such a particular person, in the plain, obvious, and natural construction of the whole, and would be perfect nonsense if restrained to any other meaning, is as properly a libel, as if it had expressed the whole name at large; for it brings the utmost contempt upon the law, to suffer its justice to be eluded by such trifling evasions: And it is a ridiculous absurdity to say, that a writing which is understood by every the meanest capacity, cannot possibly be understood by a judge and jury. **I** Haw. 194.

And it matters not whether the libel be true, or whether the party against whom it is made be of good or bad fame; for in a settled state of government, the party grieved ought to complain, for any injury done to him, in the ordinary course of law, and not by any means to revenge him-

Libel.

himself, either by the odious course of libelling, or otherwise, 5 Co. 125. But this is to be understood, when the prosecution is by information or indictment; but in an action on the case, which is to repair the party in damages, the defendant may justify the truth of the facts, and shew that the plaintiff hath received no injury. 3 Blackst. c. 8. p. 126.

Of any person] Where a writing inveighs against mankind in general, or against a particular order of men, as for instance, men of the gown, this is no libel; but it must descend to particulars and individuals to make it a libel. 3 Salk. 224.

Expressed either in printing or writing, signs or pictures] A libel is either in writing, or without writing: In writing, when an epigram, rhyme, or other writing is published to the contumely of another, by which his fame or dignity may be prejudiced: Without writing, may be by pictures, as to paint the party in any shameful and ignominious manner; or by signs, as to fix a gallows, or other reproachful and ignominious signs at a man's doors. 5 Co. 125.

E. 7 G. Mayor of Northampton's case. He sent lord Halifax a licence to keep a publick house, which the court said was a libel in the case of a person of his quality, and granted an information for it. Str. 422.

Or the memory of one that is dead] For the offence is the same, whether the person libelled be alive or dead. 5 Co. 125.

II. Who are punishable for it.

It is certain, that not only he who composes a libel, or procures another to compose it, but also he who publishes, or procures another to publish it, are in danger of being punished for it; and it is said not to be material, whether he who disperses a libel know any thing of the contents or effect of it or not; for nothing would be more easy, than to publish the most virulent papers with the greatest security, if the concealing the purport of them from an illiterate publisher, would make him safe in dispersing them. 1 Haw. 195.

Also it hath been said, that if he who hath either read a libel himself, or hath heard it read by another, do afterwards maliciously read or repeat any part of it, in the

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presence of others, or lend or shew it to another, he is guilty of an unlawful publication of it. 1 *Haw.* 195.

Also it hath been holden, that the copying of a libel shall be a conclusive evidence of the publication of it, unless the party can prove, that he delivered it to a magistrate to examine it. 1 *Haw.* 195.

And it hath been ruled, that the finding a libel on a bookseller's shelf, is a publication of it by the bookseller; and that it is no excuse to say, that the servant took it into the shop without the master's knowledge; for the law presumes the master to be acquainted with what the servant does. *Seff. C. V.* 1. p. 33. *K. and Dodd,* 10 G.

And it seems to be the better opinion, that he who first writes a libel dictated by another, is thereby guilty of making it, and consequently punishable for the bare writing; for it was no libel, till it was reduced to writing: For the essence of a libel consisteth in the writing of it; for if a man speaks such words, unless the words be put in writing, it is not a libel. 2 *Salk.* 419. 1 *Haw.* 195.

Also it hath been resolved, that the sending of a letter full of provoking language to another, without publishing it, is highly punishable, as manifestly tending to a disturbance of the peace. 1 *Haw.* 195.

But it hath been resolved, that he who barely reads a libel in the presence of another, without knowing it before to be a libel, or who is only proved to have had a libel in his custody, shall not in respect of any such act be adjudged the publisher of it. But the having in one's custody a written copy of a libel publickly known, is an evidence of the publication of it. 1 *Haw.* 196.

III. How punishable.

There seemeth to be no doubt, but that the offenders may be condemned to pay such fine, and also to suffer such corporal punishment, as to the court in discretion shall seem proper, according to the heinousness of the crime, and the circumstances of the offender. 1 *Haw.* 196.

And it hath been adjudged, that libels, as having a direct and immediate tendency to a breach of the peace, are indictable before justices of the peace. 2 *Haw.* 40.

On an indictment setting forth the offence, according to the tenor and to the effect following, it was agreed by the court, that to the effect following had been naught, being vague and

Libel.

useless words; for the court must judge of the words themselves: But the words, *according to the tenor*, do correct the defect; for they import the very words themselves, for the *tenor* of a thing is the transcript and true copy of it, to which it may be compared: And therefore of words spoken there can be no tenor, because there is no written original. 2 Salk. 417. 3 Salk. 225.

And it must be proved to be written or published, in the county laid in the indictment; all matters of crime being local. Read. Lib. State Tr. V. 3. 774, 775. V. 4. 672.

Indictment for a libel.

THE jurors for our lord the king upon their oath present, that A. O. late of——— in the county of——— gentleman, not having God before his eyes, but moved by the instigation of the devil, and falsely and maliciously contriving and intending to bring our said lord the king into hatred and infamy amongst his subjects, and to move sedition amongst the subjects of our said lord the king, did on the——— day of——— in the——— year of the reign of——— with force and arms, at——— aforesaid, in the county aforesaid, falsely, seditiously, and maliciously write and publish, and cause to be written and published, a certain false, seditious, and scandalous libel, intitled——— In which said libel are contained, among other things, divers false, seditious, scandalous, and malicious matters according to the tenor following, to wit,——— And in another part of the same libel are contained divers other false, seditious, scandalous, and malicious matters, according to the tenor following——— to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

Linen cloth.

FOR the duties on linen cloth printed or stained; see title Excise.

For journeymen and other workmen imbezilling the materials of the linen manufacture, see title Servants.

I. Any

1. Any person, native or foreigner, may without paying any thing, in any place, privileged or unprivileged, corporate or not corporate, set up and exercise the occupation of breaking, hickling, or dressing of hemp or flax; as also for making and whitening of thread; as also of spinning, weaving, making, whitening, or bleaching any cloth made of hemp or flax only; as also the mystery of making twine or nets for fishery, or of stoving of cordage; as also the trade of making tapestry hangings. 15 C. 2. c. 15. f. 2.

Who may set up trades in the linen manufacture.

And all foreigners that shall use any the trades aforesaid three years, shall (taking the oaths of allegiance and supremacy before two justices near unto their dwellings) enjoy all privileges as natural born subjects.

f. 3.

2. Whereas certain evil disposed persons, by sundry devices, stretch linen cloth both in length and breadth, and then with battledores or otherwise beat the same, casting thereupon certain deceitful liquors mingled with chalk and other like things, whereby the cloth is made finer and thicker to the eye, but the threads are thereby loosened and made weak: If any person shall hereafter use the said deceits, or do any other act with any linen cloth whereby it shall be made worse, the said cloth shall be forfeited, and the offender punished by one month's imprisonment at the least, and pay such fine as the justices shall assess. 1 El. c. 12. f. 1.

Deceitful making of linen cloth.

And the judges of assize, and justices of the peace or three of them (1 Q.) may hear and determine the same in their sessions, by information, indictment, or upon the traverse of any presentment or indictment found before them.

f. 2.

And if any person shall seize any such deceitful linen cloth, he shall at the next sessions, or before two justices (1 Q.) make due information of the offence and of the seizure, or else shall procure the offender to be indicted at the next sessions, and shall also be bound by recognizance or obligation to pursue the same with effect, and to give evidence, and to pay the moiety of what he shall recover, to the sheriff or other accountant to the use of the king. And the other half shall go to the informer or prosecutor.

f. 3.

And the justices before whom the offence shall be tried, shall certify the same by estreat into the exchequer yearly at Michaelmas as they do other estreats, and thereupon the barons may make process for so much thereof as appertaineth

Linen cloth.

Destroying in the
working, or
stealing linen
cloth.

taineth to the king, in like manner as for other fines.
§. 4.

3. By the 18 G. 2. c. 27. Every person who shall, by day or night, feloniously steal any linen, fustian, calico, or cotton cloth; or cloth worked, woven, or made of any cotton or linen yarn mixed; or any thread, linen, or cotton yarn; linen or cotton tape, incle, filleting, laces, or any other linen, fustian, or cotton goods, laid to be printed, whitened, bowked, bleached, or dried, to the value of 10s. or shall knowingly buy or receive any such wares stolen, shall be guilty of felony without benefit of clergy.

And by the 4 G. 3. c. 37. If any person shall, by day or night, break into any house, shop, cellar, vault, or other place or building, or by force enter into any house, shop, cellar, or vault, or other place or building, with intent to steal, cut, or destroy any linen yarn, or any linen cloth, or any manufacture of linen yarn belonging to any manufactory, or the looms, tools, or implements used therein; or shall wilfully or maliciously cut in pieces or destroy any such goods, when exposed either to bleach or dry; he shall be guilty of felony without benefit of clergy.
§. 16.

Affixing counter-
feit stamps on
linen cloth.

4. If any person shall cause any stamps to be affixed to any foreign linens imported, in imitation of the stamps put on *Scotch* or *Irish* linens; he shall forfeit 5l. for each piece: Or if any person shall expose or pack up for sale any foreign linens (knowing them to be so stamped) as the manufacture of *Scotland* or *Ireland*; he shall forfeit the same, and also 5l. for each piece. And if any person shall affix any counterfeit stamp on any linen of the manufacture of *Great Britain* or *Ireland*, in order to vend the same as linens duly stamped; he shall forfeit 5l. for each piece: And if any person shall expose or pack up for sale, any such linens, knowing them to be so stamped; he shall forfeit the same, and also 5l. for each piece. 17 G. 2. c. 30.
§. 1.

And one justice may convict the offender on the oath of one witness, and may grant his warrant for distress and sale; and for want of sufficient distress, any justice, on proof thereof made on oath by the person executing the warrant, may commit him to goal for six months, unless it be paid sooner: Which penalty shall go to the informer, deducting 2s. in the pound to be paid to the constable who shall execute the warrant. §. 2.

5. By

5. By the 18 G. 2. c. 36. and 21 G. 2. c. 26. and 32 G. 2. c. 32. and 7 G. 3. c. 43. there are many restrictions relating to the *importation* of foreign cambricks and French lawns, which not falling under the cognizance of justices of the peace, are here omitted.

Concerning the *wearing* of the said (foreign) cambricks or French lawns, it is enacted, that no person shall wear any cambrick or French lawn, on pain of 5 l. to the informer, on conviction by oath of one witness before one justice; who shall, on information on oath in six days after the offence committed, summon the party, and on his appearance or contempt proceed to examine the matter, and on due proof thereof made, either by confession, or oath of one witness, hear and determine the same, and cause the penalty to be levied by distress. The party aggrieved may appeal to the next sessions, giving six days notice. 18 G. 2. c. 36. f. 1.

And if any person shall *sell* or expose to sale any cambrick or French lawns, made or not made up (except for exportation); he shall forfeit 5 l. in like manner. 18 G. 2. c. 36. f. 2.

But if the wearer shall, on oath before a justice, discover the seller; he shall be discharged, and the seller only shall be liable. 18 G. 2. c. 36. f. 3. 21 G. 2. c. 26. f. 2.

And where such wearer shall be excused by discovering the vender, the penalty on the vender shall go to the person who informed against the wearer. 21 G. 2. c. 26. f. 3.

And any milliner or other person, who shall for hire make up any cambrick or French lawn for any wearing apparel, shall be liable to the penalties inflicted on the vender. 21 G. 2. c. 26. f. 5.

And where an offender is a feme covert, living with her husband, the penalty shall be levied on the goods of the husband. 21 G. 2. c. 26. f. 4.

6. By the 4 G. 3. c. 37. and 7 G. 3. c. 43. there are divers regulations concerning the making and stamping cambricks and lawns made in *England*; and if any person shall forge and counterfeit such stamp, he shall be guilty of felony without benefit of clergy.

Cambricks and lawns made in England.

Ling. Burning of it. See *Burning*.

London.

London.

THERE are many act of parliament relating to the city of *London* and other places within the bills of mortality, which being only local are not within the compass of this work; and which would require a distinct volume of themselves. Sir *John Fielding*, in his "Extract of the penal laws relating to the peace and good order of the city of *London*," hath collected these partly, amongst other more general laws, for the instruction of ignorant offenders, and admonition of the unwary. It would be a work of further service to the metropolis, if some person would undertake a compleat collection and digest of all the laws relating to the cities of *London* and *Westminster*, and other places within the bills; out of which might be selected again, such only as concern the office of a justice of the peace in particular.

Lord's day.

Reforting to
church on the
lord's day.

1. **A**LL persons, not having a reasonable excuse, shall resort to their parish church or chapel (or to some congregation of religious worship allowed by the toleration act) on every *sunday*; on pain of punishment by the censures of the church, or of forfeiting 1 s. to the poor for every offence. 1 *El. c. 2. f. 14, 24.* To be levied by the churchwardens by distress, by warrant of one justice. 3 *J. c. 4. f. 27, 28.*

Sports on the
lord's day.

2. King *James* the first, in 1618, publicly declared to his subjects, in what was called the book of sports, these games following to be *lawful*, viz. dancing, archery, leaping, vaulting, maygames, whitson ales, and morris dances; and did command that no such honest mirth or recreation should be forbidden to his subjects on *sunday* after evening service: But restraining all recusants from this liberty; and commanding each parish to use these recreations by itself; and prohibiting all *unlawful* games, bear baiting, bull baiting, interludes, and bowling by the meaner sort. *Dalt. c. 46.*

After

After which it was enacted by the statute of the 1 C. c. 1. that there shall be no concourse of people *out of their own parishes* on the lord's day, for any sport or pastimes; nor any bear baiting, bull baiting, interludes, common plays, or other *unlawful* exercises and pastimes used by any persons *within their own parishes*; on pain that every offender, being convicted within a month after the offence, before one justice on view, or confession, or oath of one witness, shall forfeit for every offence 3s. 4d. to the poor, to be levied by the constable and church wardens by distress: In default of distress, the party to be set publickly in the stocks for three hours.

3. By the 1 J. c. 22. No *shoemaker* shall shew, to the intent to put to sale, any shoes, boots, buskins, startops, slippers, or pantofles, upon the *sunday*; on pain of 3s. 4d. a pair, and the value thereof; to be recovered at the assizes, sessions, or leet; one third to the king, one third to him who shall sue, and one third to the town or lord of the leet. f. 28, 46, 50.

Exercising
worldly callings
on the lord's
day.

And by the 3 C. c. 1. No carrier with any horse or horses, nor waggonmen with any waggon or waggons, nor carmen with any cart or carts, nor wainmen with any wain or wains, nor *drovers* with any cattle, shall by themselves, or any other, travel on the lord's day, on pain of 20s. or if any *butcher*, by himself, or any other for him, with his privity and consent, shall kill or sell any victual on the lord's day, he shall forfeit 6s. 8d. The conviction to be in six months before one justice, or mayor, on view, or confession, or oath of two witnesses; to be levied by the constable or churchwarden, by distress; or to be recovered in any court of record, in any city or town corporate, before the justices in sessions; to be applied to the use of the poor, except that the justice may reward the informer or prosecutor with part of the forfeiture, not exceeding one third part.

And by the 29 C. 2. c. 7. it is further enacted, that no *drover*, *horse courser*, *waggoner*, *butcher*, *higler*, or any of their servants, shall travel, or come to his inn or lodging on the lord's day, on pain of 20s. and in general, that no *tradesman*, *artificer*, *workman*, *labourer*, or other person, shall do or exercise any worldly labour, business, or work of their ordinary callings on the lord's day; (except works of necessity and charity; and except dressing of meat in families, and dressing and selling of meat in inns, or cooks

shops,

After

Lord's Day.

shops, or victualling houses, for such as cannot otherwise be provided; and by the 9 *An. c. 23. f. 20.* except licensed hackney coachmen and chairmen within the bills of mortality;) on pain of every offender above 14 years of age forfeiting 5 s. and also that no person shall publickly cry, *shew forth, or expose to sale*, any wares, merchandizes, fruit, herbs, goods or chattels whatsoever, on the lord's day, (except crying and selling of milk, before nine in the morning and after four in the afternoon; and except mackarel, which may be sold on *sundays*, before or after divine service, by the 10 & 11 *W. c. 24. f. 14.*); on pain of forfeiting the same; and also that no person shall use, employ, or travel on the lord's day, with any *boat, wherry, lighter, or barge* (unless allowed by a justice of peace, on extraordinary occasion; and except 40 watermen who may ply on the *Thames* on *sundays* betwixt *Vauxhall* and *Lincolnehouse*, by the 11 & 12 *W. c. 21. f. 13.*) on pain of 5 s. and if any person offending in any of the premises, shall be thereof convicted in ten days after the offence, before one justice, on view, or confession, or oath of one witness, the justice shall give warrant to the constables or churchwardens, to seize the goods cried, shewed forth, or put to sale, and to sell the same; and to levy the other forfeitures by distress; to the use of the poor, except that the justice may out of the same reward the informer with any sum not exceeding one third part. And for want of distress, the offender shall be set publickly in the stocks for two hours.

By the 2 *G. 3. c. 15.* *Fish* carriages shall be allowed to pass on sundays and holidays, whether laden or returning empty. *f. 7.*

E. 32 G. 2. K. and Cox. An information was moved for against a justice of the peace, for refusing to receive an information against a *baker*, for exercising his trade on a sunday, contrary to the aforesaid statute of the 29 *C. 2. c. 7.* On shewing cause, it appeared, that the charge against the baker was, not for baking *bread*, but for baking puddings, and pies, and other such things for dinner. And the court were of opinion, that this was not an offence within the act; but falls within the exception of works of necessity and charity, and within the equity of the proviso as being a cook's shop; there being the same reason that the baker should bake for others, as that a cook should roast and boil for them: And it is better that one baker and his men should stay at home, than many families and servants. And the rule to shew cause was discharged, with costs. *Burrow, Mansfield. 785.*

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4. By the 10 G. 3. c. 19. If any person shall, on a ^{Killing game on the lord's day.} Sunday, take, kill, or destroy, or use any gun, dog, snare, net, or other engine for taking, killing or destroying, any hare, pheasant, partridge, moor game, heath game, or grouse; he shall, on conviction on the oath of one witness before one justice, forfeit not exceeding 30l, nor less than 20; and if not forthwith paid, the justice shall levy the same by distress; half to the informer, and half to the poor: And if no sufficient distress can be had, the justice shall commit the offender to the common gaol or house of correction for any time not exceeding six calendar months, nor less than three: As is set forth more particularly under the title *Game*.

5. No person upon the lord's day, shall serve or execute any writ, process, warrant, order, judgment, or decree (except in cases of treason, felony, or breach of the peace), but the service thereof shall be void; and the person serving the same shall be as liable to answer damages to the party grieved, as if he had done the same without any writ, process, warrant, order, judgment, or decree. ^{Serving process on the lord's day.} 29 G. 2. c. 7. f. 6.

But this doth not extend to ecclesiastical process, as citations, or excommunications. *Gibf. 271.*

A justice issued a warrant to the constable, to make a person find sureties for his *good behaviour*: the constable executed the warrant on a *Sunday*, and he was justified by the court; who resolved, that a warrant for the good behaviour is a warrant for the *peace*, and more; and that this statute is to be favourably interpreted for the peace. *Raym. 250.*

6. No hundred shall be answerable for any robbery on the lord's day: Nevertheless the inhabitants shall make hue and cry after the offenders, on pain of forfeiting to the king as much money as might have been recovered by the party robbed against the hundred, if he had been robbed on any other day. ^{Robbery on the lord's day.} 29 G. 2. c. 7. f. 5.

Warrant

Lord's day.

Warrant on the 3 C. c. 1. and 29 C. 2. c. 7. to levy 20 s. on a carrier for travelling on the lord's day; which same will do, *mutatis mutandis*, for the other penalties under this title.

Westmorland. } To the constable of — in the said county, and to the churchwardens of the parish of — in the said county.

FORASMUCH as A. O. of — in the county of — carrier, is duly convicted before me J. P. esquire, one of his majesty's justices assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, for that he the said A. O. on the — day of — in the — year of the reign of — being the lord's day, commonly called sunday, with his horses into and through the said parish of — did travel, contrary to the statutes in that case made and provided; whereby he hath forfeited the sum of 20 s. of lawful money of England; these are therefore to command you forthwith to levy the said sum of 20 s. by distraining the goods and chattels of him the said A. O. And if within the space of [five] days next after such distress by you taken, the said sum shall not be paid, together with the reasonable charges of taking and keeping the same, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do pay the sum of 6 s. 8 d. part of the said sum of 20 s. to A. I. of — yeoman, who informed me of the said offence, and that you see the remaining sum of 13 s. 4 d. employed to the use of the poor of your said parish of — returning to him the said A. O. the overplus upon demand, the reasonable charges of taking, keeping, and selling the said distress, being first deducted. And you are to certify to me, with the return of this precept, what you shall have done in the execution thereof Herein fail you not. Given under my hand and seal at — in the said county, the — day of —.

Lotteries. See Gaming.

Low wines. See Excise.

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Lunaticks.

1. *NON compos mentis* is of four kinds;

First, Ideots; who are of *non sane memory* from Who. their nativity, by a perpetual infirmity.

Secondly, Those that lose their memory and understanding by the visitation of God, as by sickness, or other accident.

Thirdly, Lunaticks; who have sometimes their understanding, and sometimes not.

Fourthly, Drunkards; who by their own vicious act for a time deprive themselves of their memory and understanding. 1 *Inst.* 247.

2. He who incites a madman to do a murder, or other crime, is a principal offender, and as much punishable as if he had done it himself. 1 *Haw.* 2. Inciting him to commit a crime.

3. But ideots and lunaticks, who are under a natural disability of distinguishing between good and evil, are not punishable by any criminal prosecution. 1 *Haw.* 2. Not punishable for criminal offences.

Yet drunkards shall have no privilege by their want of sound mind; but shall have the same judgment as if they were in their right senses. 1 *Inst.* 247. 1 *Haw.* 2. 1 *H. H.* 32.

4. But if a person, who wants discretion, commit a trespass against the person or possession of another; he shall be compelled in a civil action to give satisfaction for the damage. 1 *Haw.* 2. Punishable for civil offences.

5. If one who hath committed a capital offence become *non compos* before conviction, he shall not be arraigned; and if after conviction, he shall not be executed. *Hale's Pl.* 10. 1 *Haw.* 2. Becoming non compos before trial.

6. By the common law, if it be doubtful whether a criminal, who at his trial in appearance is a lunatick, be such in truth or not, it shall be tried by an inquest of office, to be returned by the sheriff; and if it be found by them, that the party only feigns himself mad, and he still refuse to answer, he shall be dealt with as one that stands mute. 1 *Haw.* 2. How tried whether he is non compos.

7. An idiot cannot bring an appeal. 1 *Haw.* 162. Whether he may bring an appeal.
8. Neither can he be an approver; because he can neither take the oath in that case required, nor wage battle. Whether he may be an approver.
3 *Inst.* 129.

Friends re-
straining him.

Overseers re-
straining him.

9. Any person may justify confining and beating his friend being mad, in such manner as is proper in such circumstances. 1 *Haw.* 130.

10. By the 17 *G.* 2. c. 5. it is enacted, that whereas there are sometimes persons, who by lunacy, or otherwise, are furiously mad, or are so far disordered in their senses that they may be dangerous to be permitted to go abroad, it shall therefore be lawful for two or more justices where such lunatick or mad person shall be found, by warrant directed to the constables, churchwardens, and overseers of the place, or some of them, to cause such person to be apprehended, and kept safely locked up in some secure place, within the county or precinct, as such justices shall under their hands and seals direct and appoint, and (if such justices find it necessary) to be there chained, if the settlement of such person shall be within such county or precinct.

And if such settlement shall not be there, then such person shall be sent to his settlement by a vagrant pass (*mutatis mutandis*); and shall be locked up or chained by warrant of two justices of the county or precinct, to which such person is so sent, in manner aforesaid:

And the reasonable charges of removing, and of keeping, maintaining, and curing such person, during such restraint (which shall be during such time only as such lunacy or madness shall continue), shall be satisfied and paid (such charges being first proved upon oath) by order of two justices, directing the churchwardens or overseers, where any goods, chattels, lands or tenements of such person shall be, to seize and sell so much of the goods and chattels, or receive so much of the annual rents of the lands, as is necessary to pay the same; and to account for what is so seized, sold, or received, to the next quarter sessions: But if such person hath not an estate to satisfy the same, over and above what shall be sufficient to maintain his family, then such charges shall be paid by the parish, town, or place, to which such person belongs, by order of two justices, directed to the churchwardens or overseers for that purpose. *f.* 20.

Provided that any person aggrieved by any act of such justices out of sessions, may appeal to the next sessions, giving reasonable notice; whose order therein shall be final. *f.* 26.

But nothing herein shall restrain or abridge the power of the king, or lord chancellor; nor shall restrain or pre-

vent

vent any friend from taking them under their own care and protection. *f. 21.*

11. The king is the general guardian of ideots and lunaticks. *17 Ed. 2. st. 1. c. 9, 10.* King the guardian of lunaticks.

12. A person of *non sane* memory shall not avoid his own act, by reason of this defect; but his heir or executor may. *4 Co. Beverly's case.* Whether he may avoid his own act.

13. If an ideot takes a wife, they are husband and wife in law, and their issue legitimate; for he is allowed to be capable of consenting to marriage. *1 Sid. 112.* Whether he may consent to marriage.

But by the *15 G. 2. c. 30.* Lunaticks found so by inquisition by commission under the great seal; or any lunatick or person under a phrenzy, whose person and estate is vested in trustees by act of parliament, if they marry before they are declared of sound mind by the lord chancellor, or the trustees or major part of them respectively, every such marriage shall be void.

14. A lunatick may surrender a lease in the court of chancery or exchequer, in order to renew the same. *29 G. 2. c. 31.* In what manner he may surrender or accept a surrender of leases.

Also, by direction of the lord chancellor, he may accept a surrender of such lease, and execute a new one. *11 G. 3. t. 20.*

15. To make a will, it is not sufficient that the testator have memory to answer to familiar and usual questions, but he ought to have a disposing memory, so as to be able to make a disposition of his estate, with understanding and reason. *6 Co. 23.* Whether he may make a will.

Madder.

IF any person shall steal and take away, or wilfully and maliciously pull up or destroy any madder roots; and shall be convicted thereof before one justice, by confession or oath of one witness; he shall, for the first offence, pay to the owner such satisfaction for damages and in such time as the justice shall appoint, and moreover shall pay down upon the conviction to the overseer for the use of

the poor such sum not exceeding 10s. as to the justice shall seem meet; and if he shall not make such recompence, and also pay such sum to the use of the poor, the said justice shall commit him to the house of correction for any space not exceeding one month, or may order him to be whipped by the constable or other officer, as to the said justice shall seem meet: and for the second offence, shall by such justice be committed to the house of correction for three months. Prosecution to be commenced within thirty days. 31 G. 2. c. 35. s. 5, 6.

Madmen. See Lunatics.

Maim.

1. **M**AIM is such a hurt of any part of a man's body, whereby he is rendred less able in fighting, either to defend himself, or annoy his adversary. 1 Haw. 111.

2. For the members of every subject are under the safeguard and protection of the law, to the end a man may serve his king and country, when occasion shall be offered: and therefore a person who maims himself, that he may have the more colour to beg, may be indicted and fined. 1 Inst. 127.

And by the like reason, a person who disables himself, that he may not be impressed for a soldier.

3. The cutting off, or disabling, or weakening a man's hand or finger, or striking out his eye, or foretooth, or castrating him, are said to be maims, but the cutting off his ear, or nose, were not esteemed maims at the common law, because they do not weaken but only disfigure him. 1 Haw. 111, 112.

4. It is said, that anciently castration was punished with death; and other maims with the loss of member: but afterwards no maim was punished in any case with the loss of life or member, but only with fine and imprisonment. 1 Haw. 112.

But now by the 22 & 23 C. 2. c. 1. (which is called the *Coventry* act, because it was made on the occasion of Sir *John Coventry's* being assaulted in the street, and his nose slit) If any person, on purpose, and of malice forethought,

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thought, and by laying in wait, shall unlawfully cut out or disable the tongue, put out an eye, slit the nose, cut off a nose or lip, or cut off or disable any limb or member of any subject, with intention in so doing to maim or disfigure him; the person so offending, his counsellors, aiders, and abettors (knowing of and privy to the offence) shall be guilty of felony without benefit of clergy; but not to work corruption of blood.

5. If a man attack another with intent to murder him, and he does not murder, but only maim him; the offence is nevertheless within this statute. 1 Haw. 112.

The case was, one Mr. *Coke* a gentleman of *Suffolk*, and one *Woodburn* a labourer, were indicted, in 1722, *Coke* for hiring and abetting *Woodburn*, and *Woodburn* for the actual fact of slitting the nose of Mr. *Crispe*. The murder of *Crispe* was intended, and he was left for dead, being terribly hacked and disfigured with a hedge bill; but he recovered. Now the bare intent to murder is no felony: but to disfigure, with an intent to disfigure, is made so by this statute; on which they were therefore indicted. And *Coke* rested his defence upon this point, that the assault was not committed with an intent to disfigure, but with an intent to murder, and therefore not within the statute. But the court held, that if a man attacks another to murder him with such an instrument as a hedge bill, which cannot but endanger the disfiguring him; and in such attack happens not to kill, but only to disfigure him; he may be indicted on this statute: and it shall be left to the jury whether it was not a design to murder by disfiguring, and consequently a malicious intent to disfigure as well as to murder. Accordingly the jury found them guilty of such previous intent to disfigure, in order to effect their principal intent to murder. And they were both condemned and executed. 4 Black. c. 15. p. 207.

6. If the maim comes not within any of the descriptions in the act, yet it is indictable at the common law, and may be punished by fine and imprisonment: Or an appeal may be brought for it at the common law; in which the party injured shall recover his damages: or he may bring an action of trespass; which kind of action hath now generally succeeded into the place of appeals in smaller offences not capital. 2 Haw. 157—160.

7. It doth not seem, that in maiming there may be accessories after the fact. 2 Haw. 311.

For maiming of cattle, see title *Cattle*.

Mainprize. See *Bail*.

Maintenance.

BUYING of titles belongeth not to this place, but is treated of under a title of its own.

- I. Of maintenance in general.
- II. Of champerty in particular.
- III. Of embracery in particular.

I. Of maintenance in general.

Concerning which I will shew,

- i. *What it is.*
- ii. *How punishable by the common law.*
- iii. *How by statute.*

i. *What it is.*

1. Maintenance (*manu tenere*) is an unlawful taking in hand or upholding of quarrels or sides, to the disturbance or hindrance of common right. 1 Haw. 249.

2. And it is twofold :

One in the country; as where one assists another in his pretensions to certain lands, by taking or holding the possession of them for him by force or subtilty; or where one stirs up quarrels, and suits in the country, in relation to matters wherein he is no way concerned: And this kind of maintenance is punishable at the king's suit by fine and imprisonment, whether the matter in dispute any way depended in plea or not; but it is said not to be actionable. 1 Haw. 249.

Another

Maintenance.

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Another in the courts of justice; where one officiously intermeddles in a suit depending in any such court, which no way belongs to him, by assisting either party with money or otherwise, in the prosecution or defence of any such suit. 1 Haw. 249.

3. Of this second kind of maintenance, there are three species;

First, where one maintains another, without any contract to have part of the thing in suit; which generally goes under the common name of *maintenance*.

Secondly, where one maintains one side to have part of the thing in suit; which is called *champerty*.

Thirdly, where one laboureth a jury; which is called *embracery*. 1 Haw. 249.

4. But it seemeth to be agreed, that wherever any persons claim a common interest in the same thing, as in a way, churchyard, or common, by the same title; they may maintain one another in a suit relating to the same. 1 Haw. 252.

5. Also, that whoever is any way of kin or affinity to the party, may counsel and assist him, but that he cannot justify the laying out any of his own money in the cause unless he be either father, or son, or heir apparent. 1 Haw. 252.

6. Also, that any one in charity may lawfully give money to a poor man, to enable him to carry on his suit. 1 Haw. 253.

How punishable by the common law.

It seemeth that all maintenance is not only *malum prohibitum* by statute, but is also *malum in se*, and strictly prohibited by the common law, as having a manifest tendency to oppression; and therefore it is said, that all offenders of this kind are not only liable to an action of maintenance at the suit of the party grieved, wherein they shall render such damages as shall be answerable to the injury done to the plaintiff, but also that they may be indicted as offenders against publick justice, and adjudged thereupon to such fine and imprisonment as shall be agreeable to the circumstances of the offence. Also it seemeth, that a court of record may commit a man for an act of

Maintenance.

maintenance done in the face of the court. 2 *Inst.* 212.
1 *Haw.* 255.

iii. How by statute.

1. By the 1 Ed. 3. ft. 2. c. 14. No person shall take upon him to maintain quarrels, nor parties in the country, to the disturbance of the common law.

2. And by the 20 Ed. 3. c. 4. None shall take in hand quarrels other than their own, nor the same maintain, by them nor by other, for gift, promise, amity, favour, doubt, fear, nor other cause, in disturbance of law, and hindrance of right.

3. And by the 1 R. 2. c. 4. None shall take or sustain any quarrel by maintenance in the country, nor elsewhere, on pain, if he is a great officer, as the king by advice of the lords shall ordain; if he is a lesser officer, he shall forfeit his office, and be imprisoned and ransomed at the king's will; and all other persons, on pain of imprisonment, and ransom at the king's will.

4. And by the 32 H. 8. c. 9. No person shall unlawfully maintain, or procure any unlawful maintenance, in any action, demand, or complaint, in any court having power to hold plea of lands; nor shall unlawfully retain any person for maintenance of any plea, to the disturbance or hindrance of justice; on pain of 10 l. half to the king, and half to him that shall sue within one year.

Unlawfully maintain] It seemeth that in an information on this statute, it is not sufficient to say, that the defendant maintained the party, without adding that he did it unlawfully. 1 *Haw.* 256.

Having power to hold plea of lands] It is said to have been adjudged, that maintenance of a suit in a spiritual court, is neither within this nor any other statute concerning maintenance. 1 *Haw.* 256.

To hold plea] It hath been holden that in an information on this statute, it is necessary to shew, that a plea was depending; and therefore that it is not sufficient to say that a bill was exhibited. 1 *Haw.* 256.

II. Of champerty in particular.

i. *What it is.*

ii. *How punishable by the common law.*

iii. *How by statute.*

i. *What it is.*

Champerty (from *campi parte*) is the unlawful maintenance of a suit, in consideration of some bargain to have part of the lands or thing in dispute, or part of the gains. 1 Haw. 156. 33 Ed. 1. ft. 2.

Every champerty is maintenance, but every maintenance is not champerty; for champerty is but a species of maintenance which is the genus. 2 Inst. 208.

ii. *How punishable by the common law.*

Champerty was an offence at the common law, and as such is punishable in like manner as hath been expressed in treating of maintenance in general. 2 Inst. 208.

iii. *How by statute.*

1. By the 3 Ed. c. 25. No officer of the king, by himself, nor by other, shall maintain pleas, suits, or other matters hanging in the king's courts, for lands, tenements, or other things for to have part or profit thereof, by covenant made between them; and he that doth shall be punished at the king's pleasure.

By covenant made] That is, by agreement either by word or writing; for albeit in the common sense, a covenant is taken for an agreement by writing, yet in a larger sense it is taken (as it is here) for an agreement by writing or by word. 2 Inst. 209.

2. And by the 28 Ed. 1. c. 11. No person whatsoever, for to have part of the thing in plea, shall take upon him the business that is in suit, nor shall any upon such covenant give up his right to another; on pain that the taker shall forfeit

Maintenance.

to the king the value of the part he hath purchased for such maintenance. But no person shall be prohibited hereby to have counsel of pleaders, or of men learned in the law, for their see; or of his parents and next friends.

3. And by the 33 Ed. 1. ft. 3. Any person who shall take for maintenance, or the like bargain, any suit or plea against another; he, and also they who consent thereto, shall be imprisoned three years, and make fine at the king's pleasure.

4. And by the 1 R. 2. c. 9. A feoffment of lands, or gift of goods, for maintenance, shall be void, and the person disseised shall recover the lands against the first disseisors, with double damages, without having any regard to such alienations.

Shall be void] But it is said that it shall only be void with regard to him that hath right, and not between the feoffor and feoffee. 1 Inst. 369.

5. And by the 31 El. c. 5. The offence of champerty may be laid in any county, at the pleasure of the informer. f. 4.

III. Of embracery in particular.

i. What it is.

ii. How punishable by the common law.

iii. How by statute.

i. What it is.

1. It seems clear, that any attempt whatsoever to corrupt, or influence, or instruct a jury, or any way to incline them to be more favourable to the one side than to the other, by money, promises, letters, threats, or persuasions, is a proper act of embracery, whether the juror on whom such attempt is made give any verdict or not, or whether the verdict given be true or false. 1 Haw. 259.

2. And the law so far abhors all corruption of this kind, that it prohibits every thing which has the least tendency to it; what specious pretence soever it may be covered with, and therefore it will not suffer a mere stranger so much as to labour a juror to appear and act according to his conscience. 1 Haw. 259.

3. But any person who may justify any other act of maintenance, may safely labour a juror to appear and give a verdict according to his conscience; but no one what-

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Maintenance.

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soever can justify the labouring a juror not to appear. 1 Haw. 260.

ii. How punishable by the common law.

There is no doubt, but that offences of this kind, do subject the offender either to an indictment or action, in the same manner as all other kinds of unlawful maintenance do by the common law. 1 Haw. 260.

iii. How by statute.

1. By the 32 H. 8. c. 9. No person shall embrace any jurors on pain of 10 l. half to the king, and half to him that shall sue within a year. f. 3, 6.

2. And by the 38 Ed. 3. st. 1. c. 12. If any juror shall take any thing to give his verdict; both he, and the embracer, shall forfeit ten times as much, half to the king, and half to him that shall sue.

Upon which statute is founded the writ of *Decies tantum*.

Indictment for maintenance.

THE jurors for our lord the king upon their oath present, that A. O. late of — in the county aforesaid, yeoman, on the — day of — in the — year of the reign of — with force and arms at — aforesaid, in the county aforesaid, did unjustly and unlawfully maintain and uphold a certain suit, which was then depending in the court of our said lord the king, before the king himself, between A. P. plaintiff, and A. D. defendant in a plea of debt, on the behalf of the said A. P. against the said A. D. contrary to the form of the statute in such case made and provided, and to the manifest hindrance and disturbance of justice, and in contempt of our said lord the king, and to the great damage of the said A. D. and against the peace of our said lord the king, his crown and dignity.

Malt. See *Crise*.

Manlaughter. See *Homicide*.

War-

Marriage.

BY the 26 G. 2. c. 33. If any person shall solemnize matrimony in any other place than a church or publick chapel (unless by special licence from the archbishop of *Canterbury*;) or without publication of bans, or licence, in a church or chapel; he shall (on prosecution in 3 years) be adjudged guilty of felony, and transported for 14 years; and the marriage shall be void. *f.* 8, 9. But not to extend to *Scotland*, nor to the marriages of quakers, or jews. *f.* 17, 18.

And if any person shall knowingly and wilfully insert, or cause to be inserted, in the register book, any false entry of any matter or thing relating to any marriage; or falsly make, alter, forge, or counterfeit, any such entry in the register, or any marriage licence, or cause the same to be done, or assent thereunto, or utter as true any such falsified register or copy thereof, or any such forged licence; he shall be guilty of felony, without benefit of clergy. *f.* 16.

For other matters relating to this title, see *Women* and *Polygamy*.

Master. See *Servant, Apprentice*.

Measures. See *Weights*.

Metheglin. See *Excise*.

Militia.

BY the 2 G. 3. c. 20. all former acts relating to the raising of the militia are repealed, except in such cases as are therein specially directed to be subject to the provisions of the said former acts or any of them. *f.* 144.

Which special directions relate only to certain particular places therein mentioned, and not to the militia within any of the counties at large: so that as to the general forming and regulating of the militia throughout the kingdom, the old militia acts seem to stand at present wholly repealed, and are only in force in some respects (as will appear) with regard

regard to the city of London, the tower hamlets, and the cinque ports. Nevertheless as the militia within these places specified doth make up a most considerable and necessary part of the whole militia of the kingdom; it is judged requisite to insert first of all the ancient militia laws as they stood before, and then to insert the new militia laws as they stand upon this present act, and other acts consequent thereupon.

(Old) Militia.

- I. *Of the appointing lieutenants and deputy lieutenants.*
- II. *Constituting inferior officers.*
- III. *Persons chargeable to find soldiers.*
- IV. *Inlisting.*
- V. *Mustering, training, and leading.*
- VI. *Trophy money; for ammunition, carriages and other necessaries.*
- VII. *Power to search for arms.*
- VIII. *Constables to be assisting.*
- IX. *Punishment for desertion or disobedience.*
- X. *Punishment for imbezilling horse or furniture.*
- XI. *Officers pay.*
- XII. *Soldiers pay.*
- XIII. *Penalties how recoverable.*
- XIV. *Double costs.*

I. *Of the appointing lieutenants and deputy lieutenants.*

The king may issue commissions to such persons as he shall think fit, to be lieutenants for the several counties, cities, and places. 13 & 14 C. 2. c. 3. s. 2.

Which lieutenants shall present to his majesty the names of such persons as they shall think fit, to be deputy lieutenants; and upon his majesty's approbation of them, shall give them deputations accordingly: always understood, that

that the king have power to direct and order otherwise; and accordingly at his pleasure may appoint and commissionate, or displace such officers. *id.*

And the said deputy lieutenants shall obey such orders as they shall receive from the lieutenants. *id.* f. 13.

But no peer shall be capable of acting as lieutenant or deputy lieutenant, unless he shall first before six of the privy council, or such others as shall be authorized by the king, take the oaths of allegiance and supremacy. *id.* f. 18. 1 W. sess. 1. c. 8. f. 11.

And no person under the degree of a peer, shall be capable of acting as lieutenant or deputy lieutenant, unless he shall first take the said oaths; which oaths, any one justice, of the county or place, may administer to such lieutenant as is not a peer; and the said lieutenant, or any one such justice, may administer the same to the deputy lieutenants not being peers. 13 & 14 C. 2. c. 3. f. 19.

II. Constituting inferior officers.

The lieutenants may give commissions to such persons as they shall think fit to be colonels, majors, captains, and other commission officers. 13 & 14 C. 2. c. 3. f. 2.

Which officers likewise, before they shall be capable of acting, shall first take the said oaths; to be administered by the lieutenants, and in their absence, or by their directions, the deputy lieutenants, or any two of them. *id.* f. 19.

Always understood, that his majesty shall have power to order otherwise, and accordingly at his pleasure may appoint and commissionate, or displace such officers. *id.* f. 2.

III. Persons chargeable to find soldiers.

Who chargeable
with horse.

I. The lieutenants and deputies, or the major part of them then present, or in the absence of the lieutenant, the major part of the deputy lieutenants then present, which major part shall be three at least, shall have power to charge any person, in the county, city, or town corporate, where his estate lies, having respect unto, and not exceeding the following proportions; viz.

No person shall be charged with finding a horse, horseman, and arms, unless he have a revenue of 500*l.* a year in possession, or an estate of 600*l.* in goods or money, besides the furniture of his house; and so proportionably for a greater estate, as they shall see cause, and think reasonable. 13 & 14 C. 2. c. 13. f. 3.

2. And

2. And they shall not charge any person with finding a foot soldier and arms, that hath not a yearly revenue of 50l. in possession, or a personal estate of 600l. in goods or money, other than stock upon the ground; and after the said rate proportionably for a greater or lesser revenue or estate. *id.*

Who chargeable with foot.

But they may require the constables to furnish, at a reasonable time and place to be appointed, on a penalty not exceeding 40s. so many sufficient arms, with wages and other incident charges, as they shall assess according to the said proportions, upon revenue under 50l. a year, or on personal estates less than 600l. And in order thereunto, if any person shall on demand refuse or neglect to provide a foot soldier or soldiers according to the proportions aforesaid, or to pay any sums of money whereat he shall be assessed by a pound rate (according to a list signed by the lieutenants and deputies or three of them) towards defraying the necessary charge in providing such arms as aforesaid, the constable by warrant may levy such sum by distress and sale, rendering the overplus, charge of distraining being first deducted: and the tenant shall pay the same, and deduct it out of his next rent; and in default thereof, his goods also shall be liable to be distrained and sold. 15 C. 2. c. 4. f. 4, 5.

But no person having an estate of 200l. a year, or personal estate of 2400l. shall be charged with finding any foot. 15 C. 2. c. 4. f. 18.

3. And they may charge any person having an estate of 100l. a year, and under 200l. or who hath a personal estate of 1200l. and under 2400l. towards the finding of foot or horse, as to them shall seem most expedient. 15 C. 2. c. 4. f. 18.

Who may be charged either with horse or foot.

4. But they shall not charge any person with finding both horse and foot in the same county. 13 & 14 C. 2. c. 3. f. 3.

None chargeable with both horse and foot.

5. And they may impose the finding of horse, horseman, and arms, by joining two, three, or more persons together in the charge. 13 & 14 C. 2. c. 3. f. 4.

Two or more may be charged together.

But no person not having 100l. a year in possession in lands, leasehold or copyhold, or 1200l. personal estate, shall be compellable to contribute in finding any horse and horseman. *id.* f. 5.

6. And no person chargeable to find a horse and horseman, or to be contributory thereunto, shall for the same estate be chargeable towards finding a foot soldier with arms,

Person chargeable with horse, not to be charged with foot.

arms, or contributory thereunto. 13 & 14 C. 2. c. 3. f. 4.

Who shall find
and who contri-
bute.

7. Where two or more are charged to find any horse or foot soldier and arms, three deputy lieutenants may appoint who shall find the same, and who shall be the contributors, and settle the sums to be paid by every contributor, in case the same contribution be not ascertained by agreement of the parties. 10 & 11 W. c. 12. f. 3.

Persons may be
examined on
oath.

8. And for the better discovery of the ability of the persons so to be assessed and charged, and of all misdemeanors tending to the hindrance of the service, they may examine on oath such persons as they shall judge necessary or convenient, or shall be produced by the party charged or accused, other than the persons themselves to be assessed or accused. 13 & 14 C. 2. c. 3. f. 11.

Hearing and de-
termining com-
plaints.

9. And they may hear complaints, and give redress, according to the merits of the cause. 13 & 14 C. 2. c. 3. f. 5.

Peers how to be
charged.

10. No peer shall be charged otherwise than as follows, viz. the king may issue out commissions under the great seal, to so many peers (not fewer than 12) as he shall think fit; who, or any 5 of them, shall have power to assess all or any peers, according to the proportions herein mentioned (except the monthly taxes hereafter following) and to execute all the powers of this act, as well for laying assessments, as imposing of penalties (imprisonment only excepted). Which assessment or charge so made, and penalties imposed, shall be certified to the lieutenants. And in case of default in performance of any thing to be done or paid by any peer, the lieutenant and deputies, or any three of them, may cause distresses to be taken in the lands of such defaulter; and if satisfaction shall not be made in one week after such distress taken, then the same to be sold: and if a tenant be distrained, he may deduct the sum levied out of his next rent. 13 & 14 C. 2. c. 3. f. 33.

Officer how
chargeable.

11. Every commissioned foot officer shall be exempted from finding, or contributing to find, any horse or foot soldier, for his whole estate, if it is but charged with one horse, or a less charge, or for such part of his estate as is charged with one horse, if his whole estate be charged with a greater charge than one horse in the county or lieutenancy where he so serves as a foot officer, in respect of the expence which the said employment doth necessarily engage him in. 15 C. 2. c. 4. f. 9.

12. Where

12. Where any papist, reputed papist, or other person refusing to take the oaths, is chargeable in respect of his estate, the lieutenant, or in his absence the deputies, or three of them, may appoint such person as they shall think most meet, to furnish the same; and may charge the same estate with the payment of the yearly sum of 8*l.* for a horse, horseman, and arms, and of 30*s.* for a foot soldier and arms. And if he shall not pay the same on demand, they may by their warrant levy the same by distress and sale of the goods of such person, or of his tenants, rendering the overplus, all necessary charges in levying thereof being first deducted; and such tenant shall deduct the same out of his rent. 10 & 11 *W. c.* 12. *f.* 2.

Papists how to be charged.

13. Where any person shall be charged in the county, city, or place, where he doth not reside, they shall send notice of the charge, if he have any land in his own occupation, to such person as he employs as his servant in managing the same; and if all his estate be let to farm, then to one or two of the most sufficient tenants; who shall forthwith, with all convenient speed, convey the same to their master or landlord; and in such time as shall be appointed, bring an account of his answer: And on neglect or refusal of the landlord, to provide such horse or foot, as is duly charged upon him, for the yearly rent reserved upon every demise or other grant, and not otherwise, within the time limited; then the tenant shall provide and do, as the landlord in that behalf ought to have done: And if the tenant shall refuse or neglect, within the time limited, the lieutenants, and in their absence, or by their directions, the deputies, or two of them, may levy by their warrant all such penalties as are appointed by this act, by distress and sale of the offender's goods. 13 & 14 *C.* 2. *c.* 3. *f.* 16.

Persons residing out of the liberty, how to be charged.

And the tenant may defalk out of his next rent, all such money as he shall necessarily lay out in providing the same, or shall be levied upon him by distress for any default; unless the landlord shall make it appear in two months after such levying, before the lieutenant, or in his absence, or by his direction, the deputies, or any two of them, that the default and penalty was occasioned by the tenant's wilful neglect. *id.* *f.* 17.

But this shall not avoid any covenant between landlord and tenant, concerning the finding horses or arms, or the bearing of any charges by any tenant; but all charges shall be born by such tenant, according to the agreement. *id.* *f.* 29.

Penalty on persons not furnishing.

14. If any person shall refuse or neglect, by a reasonable time to be appointed, to provide such horse, horseman, arms and other furniture, or to pay such sum towards providing the same as aforesaid; the lieutenants and deputies, or three of them, may inflict a penalty on such person not exceeding 20*l.* and by their warrant may levy such sum or the value of such horse, arms, and furniture, and such penalty inflicted, by distress and sale, rendering the overplus, all necessary charge in levying thereof being first deducted; the same to be employed to the uses in default whereof the same was imposed. 13 & 14 *C. 2. c. 3. f. 9.*

And if any person shall refuse or neglect, by a reasonable time to be appointed, to provide and furnish such foot soldier and arms as shall be charged upon him; the lieutenants and deputies, or three of them, may inflict a penalty not exceeding 5*l.* to be employed to the uses in default whereof it was imposed: And the constable, by warrant for that purpose, may levy such sum by distress and sale, rendering the overplus, charges of distraining being first deducted; and the tenant shall pay the same, and deduct it out of his next rent, and in default thereof his goods also shall be liable to be distrained and sold. 15 *C. 2. c. 4. f. 3, 5.*

And if any person charged as a contributor, being an inhabitant, shall refuse to pay his proportion on demand; or if he be not an inhabitant, if his tenant shall not pay the same upon demand; three deputy lieutenants by their warrant may levy the same by distress and sale, rendering the overplus, all necessary charge in levying thereof being first deducted; and such tenant may deduct the same out of his rent. 10 & 11 *W. c. 12. f. 3.*

None compellable to serve in person.

15. But no person charged with the finding horse or foot, or with contributing thereunto; shall be compellable to serve in person; but may find one to serve for him, to be approved by the captain; subject nevertheless to be altered upon appeal to the lieutenant, or in his absence to two deputy lieutenants. 13 & 14 *C. 2. c. 3. f. 25.*

IV. Inlisting.

Every man who shall serve in his own person, or such person as shall be accepted in his stead, shall at the next muster of his troop or company, give in his name and place of abode, unto such person as the lieutenant, or in

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his absence, or by his direction, any two deputy lieutenants shall appoint; to the end that the same may be lifted. 13 & 14 C. 2. c. 3. f. 25.

But he shall not be capable of acting as a soldier, unless he first take the said oaths abovementioned, to be administered by the lieutenant, or in his absence, or by his direction, the deputy lieutenants, or any two of them. *id.* f. 19.

V. Mustering, training, and leading.

1. By the 13 & 14 C. 2. c. 3. The lieutenants shall have power to call together the militia, and to arm and array them, and form them into companies, troops, and regiments, and in case of insurrection, rebellion, or invasion, them to lead, conduct, and employ, or cause them to be led, conducted, and employed, as well within the several counties, cities, and places for which they shall be commissioned respectively, as also into any other counties and places, for the suppressing of all such insurrections and rebellions, and repelling of invasions, as may happen to be, according as they shall receive directions from his majesty. f. 2.

And by the 15 C. 2. c. 4. The lieutenants, and in their absence, or by their directions, the deputy lieutenants, or two of them, shall have power to lead, train, and exercise, or by warrant under their hands and seals, cause to be led, trained, and exercised, the persons so raised, arrayed, and weaponed. f. 1.

But nothing herein shall extend to the giving any power for marching any subjects out of the realm; otherwise than by the laws of *England* ought to be done. 13 & 14 C. 2. c. 3. f. 32.

2. The ordinary times for training, exercising, and mustering, shall be these: The general muster and exercise of regiments, not above once a year; The training and exercising of single companies, not above four times a year, unless special directions be given by the king or his privy council; And such single companies and troops shall not at any one time be continued in exercise above the space of two days; And at a general muster and exercise of regiments, no officer or soldier shall be constrained to stay above four days together from their habitations. *id.* f. 21.

3. At every such muster and exercise, every musqueteer shall bring with him half a pound of powder, and half a pound of bullets; and every musqueteer that shall serve with

with a match lock, shall bring with him three yards of match; and every horseman shall bring with him a quarter of a pound of powder, and a quarter of a pound of bullets; all which shall be at the charge of him who provides the said soldier and arms: on pain of 5 s. for every omission. 13 & 14 C. 2. c. 3. f. 21. 15 C. 2. c. 4. f. 7.

And the arms offensive and defensive, with the furniture for horse, shall be as follows; the defensive arms, a back, breast, and pot, pistol proof; the offensive arms, a sword and a case of pistols, the barrels not under 14 inches in length; the furniture for the horse, a great saddle or pad with burs and straps to affix the holsters unto, a bit and bridle, with a pectoral and crupper: for the foot, a musqueteer shall have a musket, the barrel not under three foot in length, and the gauge of the bore to be for 12 bullets to the pound, a collar of bandileers, with a sword: a pikeman to be armed with a pike of ash, not under 16 foot in length (head and foot included) with a back, breast, head-piece, and sword. 13 & 14 C. 2. c. 3. f. 21.

Master master.

4. The muster master shall be an inhabitant of the county. 15 C. 2. c. 4. f. 6.

And once a year each soldier shall pay to him such sum, not exceeding 1 s. for a horseman, and 6 d. for a footman, as the lieutenants and deputies, or three of them, shall under their hands and seals direct; who shall have power to levy the same, by distress and sale of the goods of the persons charged to find such horseman, or foot soldier, unless the default be by the neglect of such soldier, who in that case shall be accountable for the same. *id.*

Penalty on not furnishing.

5. If any person charged shall refuse or neglect to send in, or deliver his horse, arms, or other furniture, at the beat of drum, sound of trumpet, or other summons; the lieutenants, and deputies or three of them, may inflict a penalty not exceeding 5 l. to be levied by distress and sale, rendering the overplus, necessary charges for levying being first deducted. 13 & 14 C. 2. c. 3. f. 10.

Exception as to corporation.

6. Provided, that no officer or soldier of the militia, belonging to any city, borough, or town corporate, being a county of itself, or to any other corporation or port town, who have used to be mustered only within their own precincts, shall be compellable to appear out of such precincts at any muster or exercise only. 13 & 14 C. 2. c. 3. f. 28.

VI. Trophy money; for ammunition, carriages, and other necessaries.

And for furnishing ammunition and other necessaries, the lieutenants and deputies, or three of them, shall have power to lay rates on the respective counties and places, not exceeding in the whole in any one year the proportion of a fourth part of one month's assessment in each county, after the rate of 70000 l. a month, charged by the act of the 12 C. 2. c. 29. Which shall be assessed, collected, and paid by such persons, and according to such directions as shall be given by the lieutenants and deputies, or three of them; under the like penalties, and by the like ways and means as are prescribed in the said act. 13 & 14 C. 2. c. 3. f. 7.

Which said act of the 12 C. 2. c. 29. directs the sum of 70000 l. a month to be raised in the like manner as by the act of the 12 C. 2. c. 21. which act did direct the same to be raised, according to the proportions, and in such manner as by an ordinance of both houses made in his majesty's absence: Which ordinance was as followeth;

That is to say, there shall be raised an assessment of 70000 l. a month, in these proportions,

On the county of

(Old) Militia.

	<i>l.</i>	<i>s.</i>	<i>d.</i>		<i>l.</i>	<i>s.</i>	<i>d.</i>
Bedford	933	6	8	City	107	6	8
Berks	1088	17	10	Rutland	272	4	6
Buckingham	1283	6	8	Salop	1322	4	4
Cambridge	1102	10	0	Stafford	919	6	8
Isle of Ely	367	10	0	Litchfield	14	0	0
Chester county	770	0	0	Somerset	2722	4	6
City	85	11	2	Bristol	171	2	2
Cornwall	1633	6	8	Southampton	2022	4	4
Cumberland	108	0	0	Suffolk	3655	11	2
Derby	933	6	8	Surrey	1565	5	6
Devon	3003	15	6	Southwark	184	14	6
Dorset	1311	10	6	Sussex	1905	11	2
Town of Pool	10	14	0	Warwick	1244	8	10
Durham	153	14	4	Westmorland	73	19	4
Essex	3500	0	0	Wilts	1944	8	10
Gloucester	1626	6	8	Worcester	1182	4	4
City	162	11	2	City	62	4	6
Hereford	1166	13	4	York	3043	8	10
Heriford	1400	0	0	Kingston	67	13	4
Huntingdon	622	4	6	Anglesea	135	14	4
Kent	3655	11	2	Brecknock	361	13	4
Lancaster	933	6	8	Cardigan	213	10	0
Leicester	1088	17	8	Carmarthen	352	6	8
Lincoln	2722	4	10	Carnarvan	202	4	4
Middlesex	1788	17	10	Denbigh	272	4	6
London	4666	13	4	Flint	135	14	6
Northampton	1400	0	0	Glamorgan	458	17	8
Nottingham	903	4	4	Merioneth	124	8	10
Town	30	2	4	Monmouth	466	13	4
Norfolk	3624	8	10	Montgomery	295	11	0
Norwich	186	13	4	Pembroke	406	0	0
Northumberland	179	19	10	Radnor	254	6	8
Newcastle	35	11	8	Haverford West	14	11	8
Oxon	1127	15	6	Berwick	5	16	8

And the commissioners shall cause the proportions to be equally assessed; and appoint assessors in each parish, who shall assess the same by a pound rate, according to all estates both real and personal, within the limits of their parishes.

And in case the way of assessing by a pound rate shall prove obstructive to the speedy bringing in of the assessment; the commissioners may direct the assessors to assess the same, according to the most just and usual way of rates practised

practised in such places. Provided that the apportionment of the assessment shall not be drawn into precedent.

And no privileged place shall be exempted from the assessment.

But nothing contained in this ordinance shall charge any master, fellow, or scholar of any college in either of the universities, or of *Winchester, Eaton, or Westminster*, or in any other free schools, or any reader, officer, or minister of the same, or of any hospitals, or almshouses, in respect of any profit arising in respect of the said places; nor charge any houses or lands belonging to *Christs hospital, Bartholomew, Bridewell, Thomas, and Bethlehem*. But their tenants shall pay for so much as their leases are yearly worth, over and above the rents reserved.

Persons in *London* shall be assessed in the parishes where they dwell: And persons out of *London*, having any office in *London*, shall be assessed where they dwell.

And the assessors shall deliver one copy of the assessment unto the commissioners; who shall sign and seal two duplicates, and deliver one to the sub-collectors, with warrant to collect; and deliver the other to the receiver general.

And if any difference arise between landlord and tenant concerning the rates, the commissioners shall settle the same; and persons aggrieved by being over-rated, on complaint in six days after demand to the commissioners who allowed the assessment, may by them be relieved.

And if any controversy shall arise which concerns any of the commissioners, he shall withdraw.

On non-payment, the collectors may distrain; and in the day-time, taking with them the constable, may break open any house, chest, or box where the goods are. And if any question arise upon the taking such distress, the same shall be determined by the commissioners.

And if persons convey their goods, the commissioners may imprison them (not being peers) till payment; and tenants may deduct the same out of their rent.

And if the proportions be not fully paid, nor can be levied, the commissioners may reassess.

And if any person shall wilfully neglect to perform his duty in the execution of this ordinance, the commissioners may fine him, not exceeding 20l. to be levied by distress, and paid to the receiver general.

And the receiver general shall have 1 d. in the pound; the sub-collectors 1 d. the head collectors 1 d. and the commissioners clerks 1 d.

But nothing herein shall be drawn into example, to the prejudice of the ancient rights belonging to the peers.

And the same power which the commissioners had by this ordinance, (which is much in the manner of the ancient subsidies, and of the present land tax), the lieutenants and deputy lieutenants seem to have by the act of the 13 & 14 C. 2.

And the lieutenants and deputies, or the chief officers upon the place, in the respective counties and places, may charge carts, waggons, wains, and horses, for the carrying of powder, match, bullet, and other materials, allowing 6 d. a mile outward only, to every such cart, waggon and wain with five horses, or six oxen, and so proportionably; and for every horse employed out of waggon or cart 1 d. upon the marching of any regiment, company, or troop, on occasion of invasion, insurrection, or rebellion. 13 & 14 C. 2. c. 3. f. 8.

And the lieutenants shall appoint one or more treasurers, or clerks, for receiving and paying such monies when levied; of all which receipts and disbursements thereof, they shall every six months give their accounts in writing upon oath, to the lieutenants and deputies, or three of them: which account shall be forthwith certified to the privy council, and a duplicate thereof shall be certified to the justices at the next sessions. *id.* f. 12.

Always provided, that the lieutenants or their deputies shall not issue warrants for raising any trophy money, till the justices in sessions, shall have examined, stated, and allowed the accounts of the trophy money collected for any preceding year, and certified such examination under the hands and seals of three or more such justices. 10 An. c. 25. f. 4.

VII. Power to search for arms.

The lieutenants, or two of their deputies, may by warrant under their hands and seals, employ such persons as they shall think fit (of which a commissioned officer, and the constable or his deputy, or in their absence some other person bearing office in the parish where the search shall be, shall be two) to search for and seize all arms in the custody of any person, whom the lieutenants or two of their deputies shall judge dangerous to the peace of the kingdom, and to secure the same, and thereof to give account to the lieutenants and in their absence, or by their directions, to the deputies, or two of them: Provided, that

that no search be made in any house between sun-setting and sun-rising, other than in cities or their suburbs, and towns corporate, market towns, and houses within the bills of mortality, where they may search in the night time, if the warrant so direct; and in case of resistance, to enter by force: And no dwelling house of a peer to be searched, but by immediate warrant from the king, or in the presence of the lieutenant or a deputy lieutenant: And in all places and houses whatsoever, where search is to be made, it shall be lawful in case of resistance, to enter by force. And the arms so seized may be restored to the owners again, if the lieutenants, or in their absence as aforesaid, their deputies, or two of them, shall so think fit. 13 & 14 C. 2. c. 3. f. 14.

VIII. Constables to be assisting.

All high constables, petty constables, and other officers and ministers, shall be aiding and assisting to the lieutenants and their deputies, or any of them. 13 & 14 C. 2. c. 3. f. 15.

IX. Punishment for desertion or disobedience.

If any of the said militia shall not appear and serve, completely furnished with horse and arms and other furniture, at the beat of drum, sound of trumpet, or other summons; the lieutenants, and in their absence, or by their directions, the deputies, or two of them, if the default be in such person, may imprison him for five days; or may inflict a penalty, if he is a horseman, not exceeding 20 s. and if a footman, not exceeding 10 s. to be paid down without delay. 13 & 14 C. 2. c. 3. f. 10.

And the lieutenants, or deputies, or chief officers upon the place, may imprison mutineers, and such soldiers as do not their duty at the days of muster and training; and may inflict for punishment for every such offence, any pecuniary mulct not exceeding 5 s. or imprisonment not exceeding twenty days. 13 & 14 C. 2. c. 3. f. 8.

And such person duly listed, shall not be exchanged, or desert, or be discharged, but by the leave of the lieutenant, or two deputies, or his captain, upon reasonable cause, first obtained in writing under hand and seal; on pain of 20 l. to be levied as other penalties; and for non-payment or want of distress, to be committed to the com-

mon gaol of the county, not exceeding three months; *id.* f. 25.

X. Punishment for imbezilling horse or furniture.

If any person shall detain or imbezil his horse, arms, or furniture; the lieutenants, and in their absence, or by their directions, the deputies, or two of them, if the default be in such person, may imprison him till he have made satisfaction. 13 & 14 C. 2. c. 3. f. 10.

XI. Officers pay.

For satisfaction of the officers for their pay, during such time (not exceeding one month) as they shall be with their soldiers in actual service, provision shall be made by the king out of the treasury. 13 & 14 C. 2. c. 3. f. 7.

And the lieutenants and deputies, or three of them, shall have power to dispose of so much of the said fourth part of the 70000 l. a month, to the inferior officers, for their pains and encouragement, as to them shall seem expedient. 15 C. 2. c. 4. f. 12.

XII. Soldiers pay.

Every person charged shall (on pain of 5 s.) pay on demand 2 s. 6 d. a day to each trooper, and shall (on pain of 2 s.) pay on demand 1 s. a day to each foot soldier, for so many days as they shall be absent from their dwellings or callings, by occasion of muster or exercise, unless some certain agreement be made to the contrary before good witness; and the said penalty is to be paid to such soldier, to whom his pay was denied; the respective penalties to be demanded in six weeks after default, or at or before the next muster or exercise, and not afterwards. 15 C. 2. c. 4. f. 2.

And in case of invasions, insurrections, or rebellions, whereby occasion shall be to draw out such soldiers into actual service; the persons so charged shall provide each their soldier with pay in hand not exceeding one month's pay, as shall be directed by the lieutenants, and in their absence, or by their directions, by the deputies or any two of them. 13 & 14 C. 2. c. 3. f. 7.

For the repayment whereof, provision shall be made by the king out of the treasury, *id.*

And

(Old) Militia.

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And in case a month's pay shall be provided and advanced as aforesaid, no person who shall have advanced his proportion thereof, shall be charged with any other like month's payment, until he shall have been reimbursed the said month's pay; and so from time to time, the month's pay by him last before provided and advanced. *id.*

XIII. Penalties how recoverable.

The forfeitures, penalties, and payments by the 15 C. 2. c. 4. not otherwise herein directed, may be recovered by warrant under the hands and seals of the lieutenants and deputies, or three of them, by distress and sale; and if sufficient distress cannot be found, then the party to be imprisoned till satisfaction shall be made. 15 C. 2. c. 4. s. 16.

XIV. Double costs.

Persons sued on either of the acts of the 13 & 14 C. 2. c. 3. or 15 C. 2. c. 4. may plead the general issue, and have double costs. And the action must be commenced in six months, and in the proper county. 15 C. 2. c. 4. s. 13, 14.

(New) Militia.

I. Former acts repealed.

II. Appointment of the lieutenants, deputy lieutenants, officers, and others, for execution of the service.

III. Number of men to be raised in the several counties.

IV. Proceedings where the militia have not been already raised.

V. Issuing precepts to return lists.

VI. Return and settling of the lists.

VII. Pro-

- VII. Proportioning the numbers in the several hundreds or other large divisions.
- VIII. Proportioning in the several parishes, tithings, or places.
- IX. Balloting.
- X. Inlisting; and therein, of substitutes.
- XI. Forming the militia into regiments and companies.
- XII. Proceedings where the militia have been already raised.
- XIII. Training and exercise.
- XIV. Cloathing and pay.
- XV. Drawn out into actual service.
- XVI. Privileges and exemptions of militia men.
- XVII. General power of enforcing the execution hereof.
- XVIII. Punishment of serjeants, drummers and fifiers for disobedience or desertion.
- XIX. Exceptions with respect to particular places and persons.

I. Former acts repealed.

BY the 2 Geo. 3. c. 20. (which at first was temporary, but by the 9 G. 3. c. 42. this, together with the other acts consequent thereupon, is made perpetual) all former acts relating to the raising the militia in *England* and *Wales*, shall be repealed, except in such cases as are herein specially directed to be subject to the provisions of the said former acts, or any of them; and the (new) militia raised by virtue of the said former acts, shall be subject to all the same provisions and regulations as the militia directed to be raised by virtue of this act are subjected to. *f. 144.*

II. Appointment of the lieutenants, deputy lieutenants, officers and others, for execution of the service.

Appointment of the lieutenants, deputy lieutenants and commission officers.

- I. The king shall issue forth commissions of lieutenancy; and such lieutenants shall have the chief command

of the militia, and shall have power, and are required, to call together all such persons, and to arm and array them, at such times, and in such manner, as is herein after expressed: And such lieutenants shall from time to time appoint such persons as they shall think fit, qualified as is herein after directed, and living within their respective counties, ridings, and places, to be their deputy lieutenants; the names of such persons having been first presented to, and approved by his majesty: And shall, before the third sub-division meetings for allotting the men, appoint a proper number of colonels, lieutenant colonels, majors, and other officers, qualified as is herein after directed; and shall certify to his majesty the names and ranks of such officers, within one month after they shall be so appointed; and if the king, within one month after such certificate shall signify his disapprobation of any such person, the lieutenant shall not grant to him a commission; but shall grant commissions to such persons so appointed, who shall not be disapproved by his majesty. 2 G. 3. c. 20. f. 1, 5.

2. When the lieutenant shall be absent out of the kingdom of *Great Britain*, the king may appoint three deputy lieutenants to grant commissions to officers, on any vacancy that shall happen during such absence. 2 G. 3. c. 20. f. 2.

When the lieutenant is absent, or the lieutenantcy is vacant.

And, more generally, by the 4 G. 3. c. 17. Where the office of lord lieutenant is vacant, the king may appoint three of the deputy lieutenants to execute the office of lord lieutenant during such vacancy. f. 2.

And by the 5 G. 3. c. 36. f. 3. If there shall happen to be no lieutenant, in any county or place; three deputy lieutenants, to be appointed by his majesty's sign manual, shall do every act necessary for carrying into execution the acts of the 2 G. 3. c. 20. the 4 G. 3. c. 17. and the said act of the 5 G. 3. c. 36.

3. Provided always, that nothing herein shall be construed to vacate any commission of lieutenantcy already granted, nor any commissions granted to officers; but the same shall continue in full force for the purposes of this act, so as the deputy lieutenants and officers be qualified as is herein after directed. 2 G. 3. c. 20. f. 3.

Deputations or commissions already granted, not to be vacated hereby.

4. Provided also, that no deputation or commission shall be vacated, by the revocation, expiration, or discontinuance of the lieutenant's commission. 2 G. 3. c. 20. f. 4.

Nor by vacating the lieutenant's commission, -

5. By

General qualification of the officers.

5. By the 2 G. 3. c. 20. divers qualifications of the officers were appointed; most of which were altered (but without prejudice to the officers that were entred upon the former qualifications) by the 9 G. 3. c. 42. as follows: In every county, riding, or place, (except as is herein after excepted) there shall be appointed 20 or more deputy lieutenants, if so many persons qualified can be therein found; if not, then so many as can be therein found; and each person so to be appointed a deputy lieutenant, shall be seised or possessed, either in law or equity, for his own use and benefit, in possession of a freehold, copyhold, or customary estate for life, or for some greater estate, or of an estate for some long term of years determinable on one or more lives, in manors, messuages, lands, tenements, or hereditaments, in *England, Wales, or Berwick upon Tweed*, of the yearly value of 200 l. or shall be heir apparent of some person who shall be in like manner seised or possessed of a like estate of the yearly value of 400 l. colonel shall be seised or possessed of a like estate of the yearly value of 1000 l. or shall be heir apparent of some person who shall be seised or possessed of a like estate of the yearly value of 2000 l. Lieutenant colonel shall be seised or possessed of a like estate of 600 l. or shall be heir apparent of some person who shall be seised or possessed of a like estate of the yearly value of 1200 l. Major or captain shall be seised or possessed of a like estate of the yearly value of 200 l. or shall be heir apparent of some person who shall be seised or possessed of a like estate of the yearly value of 400 l. or shall be a younger son of some person who shall be, or at the time of his death was, seised or possessed of a like estate of the yearly value of 600 l. Lieutenant shall be in like manner seised or possessed of a like estate of the yearly value, of 50 l. or personal estate alone of the value of 1000 l. or real and personal together of the value of 2000 l. or son of a person who shall be or at the time of his death was seised or possessed of a like estate of the yearly value of 100 l. or personal estate alone of the value of 2000 l. or real and personal together of the value of 3000 l. Ensign shall be seised or possessed of a like estate of the yearly value of 20 l. or personal estate alone of the value of 500 l. or real and personal together of the value of 1000 l. or shall be son of some person who shall be or at the time of his death was seised or possessed of a like estate of the yearly value of 50 l. or personal estate alone of the value of

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of 1000l. or real and personal together of the value of 1500l. One moiety of which said estates, required as qualifications for each deputy lieutenant, colonel, lieutenant colonel, major, and captain respectively, shall be situate or arising within such respective county or riding in which he shall be appointed to serve. 2 G. 3. c. 20. f. 5. 9 G. 3. c. 42. f. 3.

Provided, that the immediate reversion or remainder of and in manors, messuages, lands, tenements, or hereditaments, which are leased for one, two, or three lives, or for any term of years determinable on the death of one, two or three lives, on reserved rents, and which are to the lessees of the clear yearly value of 300l. shall be deemed equal to an estate herein before described, of the yearly value of 100l. and so in proportion. 2 G. 3. c. 20. f. 6.

Also, a person possessed, either in law or equity, for his own use and benefit, in possession of an estate, for a certain term originally granted for 20 years or more, of an annual value (over and above all rents and charges payable out of or in respect of the same) equal to the annual value of such an estate as is required for the qualification of a deputy lieutenant and commission officer respectively, and situate as aforesaid, shall be deemed duly qualified. f. 7.

6. In the several counties of *Cumberland, Huntingdon, Monmouth, Westmorland and Rutland*, and in every county and place in *Wales*, there shall be five or more deputy lieutenants appointed (if so many qualified can be found therein); and the estates requisite for the qualification of the deputy lieutenants and officers therein shall be as follows: A deputy lieutenant shall be seised or possessed of a like estate as aforesaid of the yearly value of 150l. or shall be heir apparent of a person having a like estate of 300l. Colonel 600l.; or heir apparent of a person having a like estate of 1200l. Lieutenant colonel or major commandant 400l.; or heir apparent of a person having a like estate of 800l. Major or captain 150l.; or son of a person having or who had at the time of his death a like estate of 300l. Lieutenant 30l.; or personal estate alone of 600l. or real and personal together of the value of 1200l.; or son of a person having or who had at the time of his death a like estate of the yearly value of 60l. or personal estate of the value of 1200l. or real and personal together of 2400l. Ensign 20l.; or personal estate alone of 300l. or real and personal together of 600l.; or

Qualification in the smaller counties.

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son of a person having or who had at the time of his death a like estate of the yearly value of 30l. or personal estate of the value of 600l. or real and personal together of 1200l. One half of all which estates, except those for the qualifications of lieutenants and ensigns, shall be situate or arising in their respective counties. 2 G. 3. c. 20. f. 8. 9 G. 3. c. 42. f. 6.

And where 20 deputy lieutenants cannot be found qualified, and willing to act; his majesty's lieutenant, after having appointed so many as can be found qualified, may appoint such number as shall be requisite to make up the number 20, who shall be seised or possessed of a like estate of the yearly value of 100l. and situate as aforesaid: Provided, that the persons so appointed shall not make the whole number to exceed twenty. 2 G. 3. c. 20. f. 9. 9 G. 3. c. 42. f. 7.

In the isle of Ely.

7. In the isle of Ely; a deputy lieutenant shall be seised or possessed of a like estate of the yearly value of 150l. or shall be heir apparent to a person having a like estate of 300l. Captain 100l.; or heir apparent of a person having a like estate of 200l. or younger son of a person who shall be, or at the time of his death was, seised or possessed of a like estate of the yearly value of 300l. Lieutenant 30l.; or personal estate of 600l. or son of some person who shall be, or at the time of his death was seised or possessed of a like estate of 60l. or personal estate of 1200l. Ensign 20l.; or personal estate of 300l. or son of some person who shall be, or at the time of his death was, seised or possessed of a like estate of the yearly value of 30l. or personal estate of 600l. One half of all which estates, except those for the qualification of lieutenants and ensigns, shall be situate or arising within the said island. 2 G. 3. c. 20. G. 10. 9 G. 3. c. 42. f. 8.

In cities or towns being counties within themselves.

8. In all cities or towns which are counties within themselves, and have heretofore used to raise and train a separate militia within their respective liberties, and which are united with and made part of any county for the purposes of raising the militia only; his majesty's lieutenant of such cities or towns, or where there is no lieutenant appointed by his majesty, the chief magistrate of such city or town, shall appoint five or more deputy lieutenants (if so many duly qualified can be found), and shall also appoint officers of the militia, whose number and rank shall be proportionable to the number of militia men which such city or town shall raise, as their quota towards the militia of the county to which such city or town is united.

united for the purposes aforesaid; and all powers given and provisions made with respect to counties at large, shall take place in the said cities and towns, except only, that after the number of persons which such city or town is to furnish shall have been appointed as aforesaid by his majesty's lieutenant and the deputy lieutenants, or by the deputy lieutenants of the county at large, two deputy lieutenants within such city or town shall have and exercise all the powers conferred on three deputy lieutenants, or two deputy lieutenants together with one justice, or one deputy lieutenant together with two justices, of any county at large: And the qualification for a deputy lieutenant shall be 150*l.* a year as aforesaid; or a personal estate alone, or real and personal estate together to the amount or value of 3000*l.* Field officer 300*l.*; or personal estate alone, or real and personal together of the value of 5000*l.* Captain 150*l.* a year; or personal estate alone, or real and personal together, to the value of 2500*l.* Lieutenant 30*l.* a year, or personal estate of 750*l.* Ensign 20*l.* a year, or personal estate of 400*l.* One half of all which real estates (except those for the qualification of lieutenants and ensigns) shall be within such city or town, or within the county at large to which such city or town, is united for the purposes aforesaid: And his majesty's lieutenants, and the chief magistrates of such cities or towns being counties within themselves, shall put the powers for raising and training the militia within such cities or towns in execution; but the militia of such cities and towns, being part of the militia of the counties to which such cities and towns are united for the purposes aforesaid, the militia of such cities or towns shall join the militia of the county to which such cities or towns are so united for the purposes aforesaid; and the whole militia so joined together, shall be exercised together at the general exercise; and shall then, and also when drawn out and embodied, be deemed the militia of the county to which such cities or towns are so united. 2 G. 3. c. 20. f. 11. 9 G. 3. c. 42. f. 9.

9. The qualifications above recited, to enable any person to be a deputy lieutenant, lieutenant colonel, major, captain, lieutenant, or ensign, shall not extend to commissions granted by the constable of the tower, or lieutenant of the tower hamlets. 2 G. 3. c. 20. f. 13.

10. When any regiment or battalion shall be drawn out and embodied; the lieutenant may, upon account of military Promotion on account of merit,

tary merit shewn in time of actual invasion or actual rebellion, promote any officer therein, from a lower to a higher commission, inclusive of that of lieutenant colonel, notwithstanding he should not have the qualification requisite for his first admittance into such higher rank: Provided, that no person, not having the qualification herein before directed for a captain, shall be promoted to a higher rank than that of captain. 2 G. 3. c. 20. f. 12. 9 G. 3. c. 42. f. 13.

Displacing officers.

11. The king, from time to time, may signify his pleasure to his lieutenant to displace any such deputy lieutenants and officers; and thereupon the lieutenant shall appoint others in their stead. 2 G. 3. c. 20. f. 14.

Officer to enter his qualification with the clerk of the peace.

12. And no deputy lieutenant or commission officer shall act as such, until he shall have left with the clerk of the peace of the county or place for which he shall be so appointed, his qualification in writing signed by himself: And the clerk of the peace shall enter the same on a roll to be kept for that purpose; and shall in the month of *January* every year transmit to one of his majesty's secretaries of state, an account of the qualifications left with him, and the secretary shall cause copies thereof annually to be laid before both houses of parliament. 2 G. 3. c. 20. f. 15. 9 G. 3. c. 42. f. 13.

And to take the oaths.

13. And every deputy lieutenant and commission officer, not having already taken and subscribed the oaths, and made and subscribed the declaration required by the former militia acts, shall at some general quarter sessions, or in one of the courts of record at *Westminster*, within six months after he shall have accepted his commission, take the oaths and make and subscribe the declaration, as other persons qualifying for offices. 2 G. 3. c. 20. f. 15.

Penalty of acting not being qualified.

14. Deputy lieutenant, colonel, lieutenant colonel, or major, acting, not being qualified, or not delivering in such qualification, and taking the oaths and subscribing the declaration, shall forfeit 200 l. captain, lieutenant, or ensign, 100 l. half to him who shall sue, and half to the uses herein after directed. 2 G. 3. c. 20. f. 16.

And the proof of the qualification shall lie on him against whom the action is brought. f. 17.

But there is generally an indemnification by some act every session of parliament, provided they qualify, and deliver in their qualification, on or before a day in such act limited.

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15. Provided, that nothing herein shall extend to restrain the lieutenant from appointing any peer of this realm or his heir apparent, to be a deputy lieutenant or commission officer, within the county or place wherein he shall have some place of residence; or to oblige any peer or heir apparent of such peer (so appointed) to leave his qualification with the clerk of the peace: But it shall be lawful for him taking the oaths, and making and subscribing the declaration aforesaid, to act, altho' he shall not have such estate in manors, messuages, lands, tenements, or hereditaments, as is above required. 2 G. 3. c. 20. f. 18. Exception as to peers.

16. Provided also, that the acceptance of a commission in the militia, shall not vacate the seat of any member returned to serve in parliament. 2 G. 3. c. 20. f. 19. Commission not to vacate a seat in parliament.

17. His majesty's lieutenant, together with three deputy lieutenants, and on the death or removal or in the absence of his majesty's lieutenant, any five deputy lieutenants, shall, at the end of every four years, at their annual meeting, in case the militia of such county or place shall not be then embodied, discharge some one field officer of each regiment or battalion, and such a number of officers of each inferior rank, as shall be equal to the number of persons who shall have given notice in writing to his majesty's lieutenant, one month at least before such meeting, that they are willing to serve as field officers, captains, lieutenants or ensigns, as the case may require: Provided, that the number of vacancies to be made shall not exceed one third of such officers who shall have served for four years in each rank respectively: Provided also, that nothing herein shall prevent any officer who has served four years, from offering himself to serve in an higher rank, if he be qualified as this act requires to serve in such higher rank. 2 G. 3. c. 20. f. 30, 1, 2. How long the officer shall continue.

18. And whereas it is proper that officers should be appointed to such companies of any county, riding, or place, as are raised in these districts near which such officers do respectively reside; it is enacted, that when the command of companies, or other commissioners, do become vacant by resignation or otherwise, the lieutenant shall make such a distribution of officers to the respective companies as he shall judge most fit and proper. 11 G. 3. c. 32. f. 24. Distribution of officers in case of vacancies.

19. It shall be lawful for his majesty's lieutenant to act as colonel of any regiment or battalion, during such time as there shall not be any colonel; but no lieutenant shall act as colonel. Lieutenant may act as colonel.

act at any one time as colonel to more than one regiment or battalion. 2 G. 3. c. 20. f. 28.

And where the lieutenant shall serve as colonel to any body of militia by this act deemed a battalion only; he shall not, when such battalion shall be embodied and in actual service, receive any other pay than that of a lieutenant colonel; and no other person shall serve or be intitled to pay as a lieutenant colonel in such battalion, during the time that the said lieutenant shall serve as colonel. f. 29.

Adjutant.

20. His majesty may appoint one proper person, who shall have served, or at the time of such appointment shall actually serve, in some of his majesty's other forces, or in any corps of militia that has been drawn out and embodied, to be an adjutant to each regiment, battalion, or independent company; and such adjutant, if appointed out of his majesty's other forces, shall, during his service in the militia, preserve his rank in the army, in the same manner as if he had continued in that service; and the lieutenant may grant to the adjutant a commission of lieutenant, or any inferior commission, although such adjutant shall not have an estate to qualify him for such commission as is required by this act. 2 G. 3. c. 20. f. 33.

Officers quitting half pay.

21. And any person who has quitted or shall quit his half pay, to serve as a commissioned officer in the militia, shall on his quitting the militia, or on the unembodying thereof, be restored to his half pay; the same to recommence from the last quarter day, or day of payment next preceding. 2 G. 3. c. 20. f. 35.

Serjeant.

22. His majesty may appoint, according to the proportion of one serjeant to 20 private men, two or more serjeants to each company, out of his other forces; such persons having served in the said forces for one year next preceding such appointment; or may appoint such other persons to be serjeants, as have formerly served for one year in his said forces; or out of any corps of militia that has been drawn out and embodied: which serjeants so appointed, shall take the following oath,

I A. B. do sincerely promise and swear, that I will be faithful and bear true allegiance to his majesty king George, his heirs and successors: and I do swear, that I am a protestant, and that I will faithfully serve as a serjeant in the militia, within the kingdom of Great Britain, for the defence of the same, until I shall be legally discharged. 2 G. 3. c. 20. f. 36.

And the colonel, or where there is no colonel the lieutenant colonel, or where there is no colonel or lieutenant colonel, the major, shall appoint a serjeant major out of the serjeants. *id.*

And the service in the militia of such persons so appointed out of his majesty's other forces, shall intitle them to the benefit of *Chelsea* hospital, in the same manner as if they had continued to serve in the said forces; and every person appointed to be a serjeant out of the pensioners on the establishment of *Chelsea* hospital, shall be put again upon the said establishment after his discharge from the militia, provided he brings a certificate of his good behaviour under the hand of the colonel or commanding officer. *id.*

And the captain of every company (with the approbation of the colonel, or where there is no colonel, of the lieutenant colonel, or where there is no lieutenant colonel, of the major of the regiment or battalion) shall appoint serjeants out of the private men, to fill up vacancies; who shall take the like oath as serjeants appointed by his majesty (which oath any one deputy lieutenant, or if the regiment or battalion shall be embodied and in another county, riding or place, any one justice there may administer.) *f. 38.*

But no person who shall keep any house of publick entertainment, or who shall sell any ale, wine, brandy, or other spirituous liquors by retail, shall be capable of being appointed or continuing a serjeant in the militia. *f. 37.*

And it shall be lawful for the commanding officer of any regiment or battalion, being a field officer, on the application of the captain to displace serjeants. *f. 38.*

Provided, that if any person who is or shall be appointed out of his majesty's other forces, to be a serjeant in the militia, and shall be for any misbehaviour reduced into the ranks, shall not within one month after such reduction be restored; he shall be returned to the company from which he was taken in his majesty's other forces, and shall there serve as a private man; and any person appointed a serjeant in the militia out of any company of militia, may be reduced into the ranks for misbehaviour, and shall serve there till he shall have compleated his three years service as a private militia man; and if there shall be no vacancy in the company from whence he was taken, he shall serve in any other company of the regiment or battalion. *f. 39.*

23. The captain of every company may appoint corporals out of the private men of his company, in the proportion

Corporal.

Drummer, and
fifer.

tion of one corporal to twenty private men; and may displace such corporals for misbehaviour, and appoint others, as he shall see occasion. 2 G. 3. c. 20. f. 38.

24. And the captain also may appoint two persons to be drummers or fifers to his company. And the colonel, or where there is no colonel the lieutenant colonel, or where there is no colonel or lieutenant colonel the major, shall appoint a drum major out of the drummers. Which drummers and fifers, when so appointed, and having received any pay as such, shall be deemed to be engaged, and compellable to serve in the same regiment or battalion, until legally discharged. And such captain may displace such drummers or fifers for misbehaviour, and appoint others in their room. 2 G. 3. c. 20. f. 36, 38.

Serjeant, drummer, or fifer in-
lister.

25. If any serjeant, drummer, or fifer, shall inlist in any of his majesty's other forces; such inlisting shall be void. 2 G. 3. c. 20. f. 40.

Clerks of the
meetings.

26. His majesty's lieutenant shall appoint a clerk for the general meetings; and may displace such clerk, if he think fit, and appoint another in his room. 2 G. 3. c. 20. f. 90.

And the deputy lieutenants within their subdivisions, shall appoint a clerk for their respective subdivision; and may displace him if they think fit, and appoint another in his room. *id.*

Clerk of the
regiment or bat-
talion.

27. His majesty's lieutenant shall from time to time, as occasion shall require, appoint a clerk to each regiment or battalion. 2 G. 3. c. 20. f. 36. *x*

And by another clause in the said act, when any regiment or battalion shall be unembodied, the colonel, or where there is no colonel the commanding officer, shall appoint a regimental clerk to such regiment or battalion. f. 98.

Agent.

28. When any regiment or battalion shall be embodied, and during the time they shall continue embodied, the colonel, or where there is no colonel the commanding officer, shall appoint an agent; and take security from such agent; and such colonel or commanding officer respectively shall be liable to make good all deficiencies on account of the pay, cloathing, or publick stock. 2 G. 3. c. 20. f. 119.

(New) Militia.

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III. Number of men to be raised in the several counties.

1. The number of private men to be raised (exclusive of the places herein after excepted) shall be as follows: Number of private men,

For the county of Bedford	400
Berks	560
Bucks	560
Cambridge	480
Chester, with the city and county of the city of	
Chester	560
Cornwall	640
Cumberland	320
Derby	560
Devon, with the city and county of the city of	
Exeter	1600
Dorset, with the island of Purbeck, and the	
town and county of the town of Poole	640
Durham	400
Essex	960
Gloucester, with the city and county of the	
city of Bristol	960
Hereford	480
Hertford	560
Huntingdon	320
Kent, with the city and county of the city of	
Canterbury	960
Lancaster	800
Leicester	560
Lincoln, with the city and county of the city	
of Lincoln	1200
Middlesex (exclusive of the tower hamlets)	1600
Monmouth	240
Norfolk, with the city and county of the city	
of Norwich	960
Northampton	640
Northumberland, with the town and county of	
the town of Newcastle, and town of Berwick	560
Nottingham, with the town and county of the	
town of Nottingham	480
Oxford	560
Rutland	20
Salop	640
Somerset	840
Southampton,	

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II. Number

(New) Militia.

Southampton, with the town and county of the town of Southampton	960
Stafford, with the city and county of the city of Litchfield	560
Suffolk	960
Surrey	800
Sussex	800
Warwick, with the city and county of the city of Coventry	646
Westmorland	240
Worcester, with the city and county of the city of Worcester	560
Wilts	800
York, West Riding, with the city and county of the city of York	1240
North Riding	720
East Riding, with the town and county of the town of Kingston	400
Anglesea	80
Brecknock	160
Cardigan	120
Caermarthen	200
Caernarvon	80
Denbigh	280
Flint	120
Glamorgan	360
Merioneth	80
Montgomery	240
Pembroke	160
Radnor	120

2 G. 3. c. 20. s. 41.

Proportioned in the several counties.

2. His majesty's lieutenant shall transmit to the privy council, from time to time, a true state of the numbers of persons fit to serve in the militia for the county or place of which he is lieutenant; and after all the said numbers shall be so transmitted to the privy council, the said council shall fix and settle, as near as may be, the number of private militia men, who shall for the future serve for each county, riding, or place, within that part of *Great Britain* aforesaid, by the proportion which the numbers returned for each county, riding, or place bear to the whole number of private militia men directed to be raised within that part of *Great Britain* aforesaid; and forthwith transmit accounts of the numbers so fixed and settled to all his majesty's lieutenants of the several counties and places respectively.

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(New) Militia.

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And where the number of private militia men so fixed and settled as aforesaid, shall be respectively greater than the number of private militia men, who shall have been by virtue of the aforesaid act appointed to serve for any county, riding, or place; in such case, his majesty's lieutenant together with two deputy lieutenants, or in the absence of his majesty's lieutenant three deputy lieutenants shall at a general meeting, to be held for that purpose, appoint what number of private militia men shall serve for each respective hundred, rape, lathe, wapentake, or other division, within the county, riding, or place, to which they belong; and the additional number of private militia men to make up the whole number so fixed and settled as aforesaid, shall be provided or chosen, and sworn and inrolled, in like manner as all other private militia men. And where the number of private militia men so fixed and settled as aforesaid, shall be respectively less than the number of private militia men, who shall be by virtue of this act appointed to serve for any county, riding, or place; in such case, his majesty's lieutenant together with two deputy lieutenants, and on the death or removal or in the absence of his majesty's lieutenant three deputy lieutenants, shall at a general meeting to be held for that purpose, discharge by lot proportionably out of each respective hundred, rape, lathe, wapentake or other division, so many private militia men as shall exceed the number so fixed and settled as aforesaid. 2 G. 3. c. 20. s. 74.

IV. Proceedings where the militia have not been already raised.

1. By the 2 G. 3. c. 20. In every county where the militia shall not be raised, the lieutenant shall within one month before the Christmas sessions, and within one month before the midsummer sessions, yearly, cause advertisements to be published in the London Gazette, and the news papers of such county signifying the want of officers; and all persons qualified and willing to serve as officers, shall at any time return their names and intention to the lieutenant, or in his absence, to any general quarter sessions for the county in which they propose to serve. s. 20.

2. And by the 9 G. 3. c. 42. The lieutenant together with two deputy lieutenants, or in the absence of the lieutenant three deputy lieutenants, shall hold an annual general meeting on the second Tuesday in March; and if no

Advertisement
for accepting
commissions.

Annual meeting
to be held.

Counties not
raising their mi-
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for each man.

meeting shall be on that day, the lieutenant or in his absence three deputy lieutenants may summon a general meeting on any other day, of which 7 days notice shall be given in some weekly paper (if any such there be) usually circulated in such county. *f. 47.*

3. Where the militia has been raised, his majesty's lieutenant or three deputy lieutenants shall yearly, on or before *Dec. 25.* certify the same to the clerk of the peace (according as is hereafter in this case directed), which certificate he shall deliver to the justices at the sessions to be held next after *Dec. 25.* and shall then file the same among the records. And where no such certificate from his majesty's lieutenant or three deputy lieutenants shall be delivered to the clerk of the peace; he shall certify under his hand and seal, to the sessions to be held next after *Dec. 25.* in that year, on the day the sessions shall be opened, that he has not received from his majesty's lieutenant or any three deputy lieutenants such certificate; and he shall file such his certificate amongst the records. 9*G.* 3. *c. 42. f. 18, 19.*

And the justices at the said sessions shall raise and levy, within such county or place, the sum of 5*l.* in lieu of every private militia man, in like manner as the county rate. *f. 20.*

Provided, that every person duly qualified, who shall have served for fours years, or shall be serving, as an officer in any corps of the militia, or who shall offer himself by writing under his hand to serve as an officer, shall be exempted from paying any part or share of such rate or assessment, nor shall his lands, wheresoever lying, be charged thereto; and the deficiency thereby occasioned shall be allowed to such county or place, by deducting the sum which would otherwise have been charged on such person, from the gross amount of the sum or sums of 5*l.* per man herein directed to be raised on such county or place. *f. 21.*

Provided, that every person claiming such exemption shall file a certificate of such service or having offered to serve, with the clerk of the peace, and shall deliver to him a list of his tenants and farmers, and of their places of abode; and the clerk of the peace shall file the same amongst the records; and when such rate shall be ordered to be made, the clerk of the peace shall certify to the treasurer and high constables, the names of the persons having filed such certificates and lists, and the names of their farmers and tenants; and the treasurer and high constables shall transmit such certificate and list to the petty constables where the

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lands lie, in order that such lands may not be charged to the said rate. *f. 22.*

And the lieutenant of the place where such person shall have served four years or is then serving, shall grant to him a certificate thereof; and every lieutenant, justice, or chief magistrate, to whom such person shall offer himself to serve, shall likewise grant him a certificate of the same; in order that he may be exempted as aforesaid. *f. 23.*

And the said rate shall be levied and kept distinct and separate from all the other county rates. *f. 24, 25.*

And the tenant may deduct the same out of his rent; except where there is a covenant to the contrary, or where the lands are not let at rack rent. *f. 25, 26.*

Where a county and a city or town being a county of itself are joined towards raising the militia, they shall each pay according to their quota's to the land tax; unless the number of men shall have been apportioned between them, and then they shall each pay according to their number of men. *f. 27.*

And where a city or town being a county of itself doth not contribute to the county rate; their proportion shall be levied, in like manner as their poor rate. *f. 28, 29.*

Where a town lies in two counties, they shall contribute in that county only where the church stands; and the deficiency of the rate which the said town would have paid, shall be made up by the county in general, and not by the division or hundred where the town is situate. *f. 30.*

And if such city or town shall not before *June 1.* yearly pay their quota to the county treasurer, the justices of the county at their midsummer sessions shall issue an order to the overseers of the poor of each respective parish within such city or town, requiring them to return to the next Michaelmas sessions the several quota's that each parish or place pays to the land tax; and the justices at the said Michaelmas sessions shall cause the same to be levied on the goods of the churchwardens or overseers, who shall be reimbursed as for money expended for the relief of the poor. *f. 31.*

And the treasurer, within one calendar month after he shall have received the money, shall pay the same to the receiver general of the land tax; who shall, within ten days after the receipt thereof, certify the same to the commissioners of the treasury, and shall forthwith pay the same into the exchequer, to be accounted for yearly to the parliament, and applied as they shall direct. *f. 33, 34.*

And

And the receiver general for his trouble shall be allowed 2d. in the pound; treasurer, 1d; high constables, 1d; petty constables, churchwardens, and overseers of the poor 1d. *f. 37.*

And the clerk of the peace shall, within 14 days next after Christmas yearly, transmit to the commissioners of the treasury, and also to the receiver general, a copy signed by him of every certificate which shall have been delivered in pursuance of this act; and if no such certificate shall have been delivered, then he shall certify that no such certificate from his majesty's lieutenant or any three deputy lieutenants hath been received by him, and that he hath certified the same to the justices of such general quarter sessions, and thereon required such justices to proceed according to the directions of this act; and shall also certify what proceedings have been had at such sessions in relation to the raising the said sum of 5*l.* per man: And if the justices at such sessions shall not proceed to raise the same, the clerk of the peace shall within 14 days next after the said sessions certify to the solicitor of the treasury such omission, and the names of the justices present at such sessions: And the solicitor of the treasury shall, on receipt of such certificate, forthwith proceed to compel the justices to raise the said sum. *f. 40.*

And if the said sum of 5*l.* per man shall not be duly paid into the exchequer; or if any person shall refuse or omit to pay his proportion or to perform his duty for raising or payment of the same; the treasurer, high constable, and petty constable, or other person to whom such default shall be made, shall within 14 days after such default, certify the same in writing signed by him, with the reason thereof, to the clerk of the peace; and the clerk of the peace shall, within 14 days after, certify the same to the solicitor of the treasury, on pain of 200*l.* and forfeiting his office, and being incapacitated to hold any office under the government: And the solicitor of the treasury shall, on receipt of such certificate, proceed with all due diligence, to prosecute all justices of the peace, receivers general, treasurers, and other persons neglecting or omitting their duty, and to raise the said sum of 5*l.* per man. *f. 41, 46.*

And if the clerk of the peace shall refuse or neglect to receive, deliver, file, make, record or transmit such certificates or any of them; he shall forfeit 500*l.* and his office, and be incapacitated: Also the solicitor of the treasury neglecting his duty shall incur the like forfeiture:

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Receiver general or treasurer neglecting his duty shall forfeit 200 l. chief constable 50 l. petty constable, and other person who shall offend in like manner, 20 l. All which forfeitures shall be to him who shall sue for the same in any of his majesty's courts of record at *Westminster*. s. 42, 3, 4, 6.

All other penalties and forfeitures by this act not otherwise directed, shall be recovered on proof upon oath before one justice, to be levied by distress: for want of sufficient distress, the offender to be committed to the common gaol.

V. Issuing precepts to return lists.

1. Where the militia hath not been raised, his majesty's lieutenant together with two or more deputy lieutenants, and on the death or removal or in the absence of his majesty's lieutenant, any three or more deputy lieutenants, shall meet at some city or principal town of the county, or place on the second Tuesday of May, in every year; and if there shall happen to be no such meeting on that day, then the said lieutenant, or, on his death or removal or in his absence, three deputy lieutenants, shall summon or cause to be summoned another meeting to be holden there, on a day to be fixed by such summons; of which day and place, notice shall be given in the London Gazette, and also in any weekly paper usually circulated in such county or riding, 14 days at least before the holding of such meeting. 2 G. 3. c. 20. s. 42.

A general meeting to be had.

Note, generally, that the general meetings are to consist of the lieutenant, together with two deputy lieutenants; or, on the death, or removal, or in the absence of the lieutenant, of three deputy lieutenants.

But within the smaller counties, to wit, of *Cumberland, Huntingdon, Monmouth, Westmorland, Rutland*, and all the counties in *Wales*, two deputy lieutenants with one justice, or one deputy lieutenant with two justices, may exercise all the powers conferred by this act on three deputy lieutenants in other places. s. 91.

2. At the said first general meeting, his majesty's lieutenant, or on his death, or removal, or in his absence, three deputy lieutenants shall appoint subdivisions. 2 G. 3. c. 20. s. 42.

Subdivision meetings to be appointed.

Which said subdivision meetings are to consist of three deputy lieutenants, or two deputy lieutenants together with one

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one justice, or one deputy lieutenant together with two justices.

And of the aforesaid general meetings there are to be three; the first, for issuing precepts to return lists; the second, for proportioning the numbers in the several larger divisions, as hundreds, or wards; the third, for forming the militia into regiments and companies.

Of the subdivision meetings, four; the first, for taking in the lists, and hearing appeals; the second, for proportioning the numbers in the smaller divisions, as parishes, or townships; the third, for balloting, and the fourth, for swearing and inrolling the men.

And others occasionally.

Where the militia are on foot; there is to be one general meeting annually; and four subdivision meetings; and others, as occasion may fall out.

But not to restrain the deputy lieutenants and justices from acting in the county at large.

What shall be done, where a sufficient number shall not appear.

3. But notwithstanding the appointment of subdivision meetings, it shall be lawful for any deputy lieutenant, or justice to act in any and every subdivision within the county, riding or place.

4. If there shall not appear at any subdivision meeting, a sufficient number of deputy lieutenants and justices to act; the clerk shall by notice given in writing to all the deputy lieutenants within such subdivision, or left at their respective places of abode, appoint another meeting to be held within 14 days, at the same place where such meeting had been before appointed to be held, giving at least five days notice thereof.

Precepts to be issued for returning lists.

5. At the said first general meeting, the lieutenant, or on his death or removal, or in his absence three deputy lieutenants, shall issue (A) their orders to the chief constable, and where there is no chief constable, to some other officer of the several hundreds, rapes, laths, wapentakes, or other divisions, to require by orders under their hands the constable or other such officer of each parish, tithing or place, to return to the deputy lieutenants within the subdivisions, at the place and on the day appointed at the said first general meeting, fair and true lists in writing, of the names of all the men usually and at that time dwelling within their respective parishes, tithings and places, between the ages of 18 and 45 years, distinguishing their respective ranks and occupations; and where the true names of such persons cannot be procured, the common appellation of such person shall be sufficient; and which of the persons so returned labour under any infirmities, incapacitating them from

from serving; having first affixed a true copy of such list on the door of the church or chapel, and if any place have no church or chapel, then on the door of the church or chapel of some parish or place thereto adjoining, on some Sunday morning before they shall make such return, which Sunday shall be three days at the least before the said meeting; and also notice in writing, at the bottom of such list, of the day and place of such meeting, and that all persons who shall think themselves aggrieved, may then appeal, and that no appeal will be afterwards received. 2 G. 3. c. 20. s. 42.

6. Provided, that no peer of this realm, nor any person who shall serve as a commission officer in his majesty's other forces, or in any of his castles or forts; nor any non-commission officer serving, or who has served, four years in the militia; nor any person being a member of either of the universities; nor any clergyman; nor any licensed teacher of any separate congregation; nor any constable, or other such peace officer; nor any articulated clerk, apprentice, seaman or seafaring man; nor any person mustering and doing duty in any of his majesty's docks; nor any person free of the company of watermen of the river *Thames*; nor any poor man who has three children born in wedlock; shall be compelled to serve personally, or to provide a substitute. 2 G. 3. c. 20. s. 43.

Persons exempted.

7. And if the deputy lieutenants and justices at any subdivision meeting, shall receive information, or suspect, that any person inserted in any list, described as an apprentice, has been fraudulently bound in order to avoid serving; they may inquire into such binding, and summon witnesses, and examine them on oath: And if such fraud shall appear, they may appoint such person so bound apprentice, to serve immediately in the militia of the place for which such list was returned, if there be a vacancy; if not, then on the first vacancy that shall happen therein: And the person to whom such apprentice shall be so bound, shall forfeit 10*l.* which, if not forthwith paid, shall be levied by distress; half to the informer, if any; and the other half, or, if there shall be no informer, then the whole, to be applied in manner hereafter mentioned. 2 G. 3. c. 20. s. 73.

Fraudulent apprenticeship.

8. If any chief constable, constable, or other officer, shall refuse or neglect to return such list, or to comply with such orders as he shall receive from the lieutenant, deputy lieutenants, and justices, in pursuance of this act;

List fraudulent.

Or

or shall in making such return be guilty of any fraud or wilful partiality; any three deputy lieutenants, or two deputy lieutenants with one justice, or one deputy lieutenant with two justices, may imprison him in the common gaol for one month, or at their discretion may fine him in any sum not exceeding 5 l. nor under 40 s. by distress. 2 G. 3. c. 20. s. 71.

And any person who shall by gratuity, gift, or reward, or by promise thereof, or of any indemnification, or by menaces, endeavour to prevail on any constable or other officer to make a false return, or to erase or leave out the name of any person who ought to be returned; he shall forfeit 50 l. to him who shall sue: and if any person shall refuse to tell his christian and surname, or the christian and surname of any man lodging or residing within his house, to any constable or other officer authorized by this act to demand the same, he shall forfeit 10 l. s. 72.

List lost.

9. If the list of any parish or place shall be lost or destroyed; the deputy lieutenants and justices, in their subdivisions, may cause a new list to be made and returned to them at their next subdivision meeting, in like manner as the former was. 2 G. 3. c. 20. s. 58.

Second general meeting appointed.

10. At the said first meeting, shall be appointed also, the time and place of a second general meeting. 2 G. 3. c. 20. s. 42.

VI. Return and settling of the list.

List to be returned upon oath.

1. On the day and at the place appointed for the first subdivision meeting as aforesaid, for the return of the lists, the constables or other officers respectively shall attend, and verify their return upon oath. 2 G. 3. c. 20. s. 42.

Appeals heard and determined.

2. And the deputy lieutenants and justices, so assembled in their subdivisions, shall (after hearing any person who shall think himself aggrieved, by having his name inserted, or by any others being omitted) direct such lists to be amended as the case shall require; and also the names of all persons by this act excepted, to be struck out of the said lists. 2 G. 3. c. 20. s. 42.

Case where a person hath two places of abode.

3. A person having more than one place of residence, shall be deemed to reside only, and shall serve, within the county or place, where his name shall have been first inserted in a list, and returned; and the clerk to the subdivision meeting to which such list shall be returned, shall

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on request grant a certificate *gratis*, that such person's name was inserted in such list, specifying the times when such list was made and returned. 2 G. 3. c. 20. f. 94.

4. And at the said first subdivision meeting they shall appoint a time and place for the second meeting within the subdivisions; for proportioning the numbers in the several parishes and townships, after they shall have been first proportioned, at the second general meeting, in the hundreds, rapes and other large divisions. 2 G. 3. c. 20. f. 42.

Time appointed for a second subdivision meeting.

5. For which purpose, they shall also, at the said first subdivision meeting, return to the second general meeting, all the lists of the several parishes, tithings, and places, so amended as aforesaid, that the men may be by them proportioned in the several larger divisions as aforesaid. 2 G. 3. c. 20. f. 42.

Lists to be returned to the second general meeting.

6. Note, that after every subdivision meeting, the clerk of the said meetings, shall within 14 days after each meeting, transmit to his majesty's lieutenant fair and true copies of the rolls signed at the said meetings. 2 G. 3. c. 20. f. 70.

Clerk to transmit an account of the proceedings.

VII. Proportioning the numbers in the several hundreds or other large divisions.

1. At the second general meeting as aforesaid, they shall appoint what number of men in each respective hundred, rape, lath, wapentake, or other division, shall serve in the said militia, towards raising the number of men by this act directed to be raised for such respective county, riding, or place, in proportion to the whole number contained in such lists. 2 G. 3. c. 23. f. 42.

Numbers proportioned in the several hundreds.

2. And if it shall appear at any time to the general meeting, that the distribution by them made amongst the several hundreds and other like divisions, was either unequally or erroneously made, or, from any subsequent alteration of circumstances, is become unequal and disproportionable; they may make a new distribution in like manner as at first. 2 G. 3. c. 20. f. 75.

The same may be altered from time to time.

3. At the said second general meeting, they shall order copies to be made of all the said lists; and such copies to be returned to the second subdivision meetings. 2 G. 3. c. 20. f. 42.

Copies to be transmitted to the second subdivision meeting.

VIII. Propor-

VIII. Proportioning in the several parishes, tithings, or places.

Proportioning in the several parishes or places.

1. At the second subdivision meeting as aforesaid, the deputy lieutenants and justices shall appoint what number of men shall serve for each parish, tithing, and place; in proportion to the number appointed at the second general meeting to serve for each hundred, rape, lath, wapentake, or other division. 2 G. 3. c. 20. s. 42.

Two or more parishes or places may be joined.

2. And they may add together, whensoever they shall think necessary, the lists for two or more parishes, tithings, or places; and proceed upon such lists added together, so as to make the choice of militia men by lot as equal and impartial as possible. 2 G. 3. c. 20. s. 44.

Third subdivision meeting appointed.

3. And if a proper number of officers be then appointed, (as is herein after mentioned), they shall appoint another meeting to be held within three weeks in the same subdivision, for allotting the men. 2 G. 3. c. 20. s. 42.

Notice to be given thereof.

4. And shall issue out an order (B) to the chief constable or other officer of the respective hundreds or other divisions, requiring them to give notice to the constable or other like officer of each parish, tithing or place, of the number of men so appointed to serve for such respective parish, tithing, or place; and of the time and place of the next subdivision meeting, for chusing the men by lot. 2 G. 3. c. 13. s. 42.

IX. Balloting.

Balloting.

1. The deputy lieutenants and justices, at such third subdivision meeting so appointed as aforesaid, shall cause the men to be chosen by lot (except as hereafter excepted), out of the lists returned for the respective parishes or places. 2 G. 3. c. 20. s. 42.

Parishes may offer volunteers.

2. Provided, that if the churchwardens or overseers of any parish, tithing or place, or of two or more parishes, tithings or places so added together as aforesaid, shall with the consent of the inhabitants of the parish or parishes, township or townships, hamlet or place, taken at a vestry, or at any other meeting, for such parish, township, hamlet or place, to be holden for that purpose, provide and produce any volunteer or volunteers, and such volunteers shall be approved by the said deputy lieutenants and justices;

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tices; they shall be then and there sworn in and inrolled: and only so many shall be chosen by lot, as shall be wanted to make up the whole number to serve for such parish, tithing, or place, or parishes, tithings or places. 2 G. 3. c. 20. §. 45.

Provided that no such volunteer shall be admitted, who shall not be five feet four inches (at least) in height, and able and fit for service. 4 G. 3. c. 17. §. 3.

And if such churchwardens or overseers, shall give to such volunteers any sum or sums of money to serve in the militia; they may make a rate on the inhabitants, by the rate they now use for the relief of the poor; which rate being approved by two justices, the said churchwardens or overseers may collect such rate, and reimburse themselves such sums as they shall have paid with the consent of the said inhabitants as aforesaid; and the overplus, if any, shall be applied as part of the poor rate. And if any shall refuse to pay; one justice, on complaint thereof by such churchwarden or overseer, may levy the same by distress. —But no ballotted person, who shall have served himself, or by substitute, three years, or who shall be then serving himself or by substitute, shall be liable to pay such rates. *id.*

Provided always, that any person who shall think himself aggrieved by such rate as aforesaid, may appeal to the next sessions, in like manner as against the poor rate. §. 46.

3. It shall not be lawful for any person (other than such churchwardens and overseers) to contract or agree with any person, for any sum or other consideration, to indemnify or insure any person liable to serve in the militia, against serving therein; or in like manner to contract or agree to provide a substitute for any person who may be chosen by lot, or to pay the penalty of 10 l. by this act laid on any person chosen by lot, who shall refuse or neglect to appear and take the oath and serve, or provide a substitute; and if any person shall offend herein, he shall, for every such contract or agreement forfeit 100 l. half to the prosecutor, and half to the poor; and every such contract shall be void. 2 G. 3. c. 20. §. 51.

Provided, that nothing herein shall extend to prevent any person chosen by lot, from procuring by himself or others, a proper person to serve as his substitute. §. 52.

Provided also, that this shall not extend to prevent persons of the same parish or place, or of two or more added together, from entering into subscriptions amongst

themselves, for paying jointly for substitutes to be provided for such of the subscribers on whom the lot may fall.

f. 53.

Fourth subdivision meeting appointed.

4. And the said deputy lieutenants and justices, at such third subdivision meeting, shall appoint another meeting to be held within three weeks in the same subdivision, for swearing and inrolling the men. 2 G. 3. c. 20. f. 42.

Notice thereof to be given to the persons ballotted.

5. And shall issue out an order (C) to the chief constables, to direct the constables or other officers of each parish or place, to give notice to every man so chosen to appear at such meeting; which notice shall be given, or left at his place of abode, at least seven days before such meeting. 2 G. 3. c. 20. f. 42.

X. Inlisting; and therein, of substitutes.

Proof to be made of notice to the ballotted.

Swearing and inrolling.

1. At the said fourth subdivision meeting, the constables shall attend, and make a return upon oath of the days when such notice was served. 2 G. 3. c. 20. f. 42.

2. And every person so chosen by lot shall, upon such notice, appear at such meeting, and there take the following oath, to be administered by one deputy lieutenant; and shall be inrolled to serve in the militia as a private militia man, for the space of three years, in a roll to be then and there prepared for that purpose; or shall provide a fit person (to be approved by the said deputy lieutenants and justices as aforesaid then met) to serve as his substitute; which substitute so provided, shall take the said oath, and sign on the said roll his consent to serve as his substitute, during the said term. 2 G. 3. c. 20. f. 42.

(Provided, that no such substitute shall be admitted and sworn, who shall not be five feet four inches in height, and able and fit for service. 4 G. 3. c. 17. f. 3.)

Which said oath shall be as follows: "I A. B. do sincerely promise and swear, that I will be faithful and bear true allegiance to his majesty king George, his heirs and successors; and I do swear, that I am a protestant, and that I will faithfully serve in the militia within the kingdom of Great Britain, for the defence of the same, during the time for which I am inrolled, unless I shall be sooner discharged." *id.*

Penalty of refusal.

3. And if any person so chosen by lot to serve in the militia (not being one of the people called quakers) shall refuse or neglect to take the said oath and serve in the militia,

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militia, or to provide a substitute to be approved as aforesaid, who shall take the said oath, and sign his consent to serve as his substitute; every person so refusing or neglecting shall forfeit 10 l. (D. E. F.) and at the expiration of three years be liable to serve again, or provide a substitute. 2 G. 3. c. 20. f. 42.

Which said forfeiture shall be applied in the first place, by the deputy lieutenants and justices as aforesaid within their respective subdivisions, in providing a substitute for the person who shall have paid such penalty; and if any part of such penalty shall remain, after such substitute shall be provided, the same shall be paid to the colonel or commanding officer, and be applied as part of the regimental stock. f. 93.

And where the goods of such offender shall not be sufficient to answer the distress, he shall be committed (as is hereafter specified) to the common gaol, for any time not exceeding three months. f. 128.

4. If any serjeant, drummer, or fifer, serving in the militia, shall beat up for volunteers; the person who shall give orders for so doing, shall, on proof of such beating up and such orders given, upon oath before one justice, forfeit 20 l. half to the person who shall make information thereof, and the other half to be applied as part of the regimental stock; and if such serjeant, drummer, or fifer, shall refuse to declare upon oath before such justice, from whom he received such orders; such justice may commit him to the house of correction, for any time not exceeding three months. 2 G. 3. c. 20. f. 55. Officers beating up for volunteers

5. No officer shall, during the time the regiment, battalion, or independent company shall be out of the county or place to which they belong, engage any person to serve in such regiment, battalion, or independent company, unless such person so engaged shall be a native of such county. 2 G. 3. c. 20. f. 56. Officers hiring men.

6. Every militia man shall, if he changes the place of his abode from one parish or place, to another parish or place, the militia whereof shall serve in the same regiment or battalion, continue to serve in such regiment or battalion for the place from whence he removed, and shall not occasion a vacancy for such parish or place, but shall be trained, exercised, and paid by the officer of the company to which the militia of such parish to which he removed shall belong; and every militia man, who shall change the place of his abode from one county to another county, or from one parish or place to another parish or place, Militia man changing his place of abode.

place, the militia whereof shall serve in different regiments or battalions; such person shall serve, upon the first vacancy, in such regiment or battalion until his service be compleated. And he shall before he change the place of his abode, give notice thereof to three deputy lieutenants, or two deputy lieutenants together with one justice, or one deputy lieutenant together with two justices, at some subdivision meeting, or to one deputy lieutenant; who shall give to him a certificate of the time he shall have served from his inrollment; and if such certificate shall have been given by one deputy lieutenant only, he shall certify the same to the next meeting within the subdivision; and such militia man shall produce the said certificate to the deputy lieutenants and justices, at the next meeting for the subdivision wherein he shall then dwell, or to one deputy lieutenant residing near, who shall certify the same to the next subdivision meeting. And if any militia man, so changing his place of abode, shall not give notice, and produce his certificate as aforesaid; he shall, on conviction upon oath before one justice, forfeit 20s. and if he shall not immediately pay the same, it shall be levied by distress; and for want of sufficient distress, he shall be committed to the house of correction for any time not exceeding one month. 2 G. 3. c. 20. s. 67.

And the clerk to the subdivision meeting shall, upon notice given by any militia man of changing the place of his abode, and of a certificate granted him as aforesaid, forthwith give notice thereof to the clerk of the meeting for the subdivision to which the parish or place where he then resides shall belong. s. 68.

Inlisting into the militia elsewhere.

7. If any person inrolled and serving in the militia shall offer himself to serve and be inrolled as a substitute in any other regiment or battalion of militia; he shall, on proof upon oath before one justice, forfeit 10l. to the informer, to be levied by distress; and for want of sufficient distress, the justice shall commit him to the common gaol for any time not exceeding 3 months. 9 G. 3. c. 42. s. 48.

And whereas doubts have been conceived whether any militia man who hath been inrolled in a different hundred, rape, wapentake, division, or place, of the same county from that in which he is bound to serve for himself, or as a substitute, could be compelled to serve as such within the provisions of the acts now in force for raising the militia; it is declared and enacted, that such inrollment is legal and valid, and that every man who hath taken the oath

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and subscribed the county roll in the presence of one deputy lieutenant [as is hereafter set forth in case where the militia have been already raised] and the clerk of the general meetings (or his deputy), shall be deemed a militia man in like manner as if three deputy lieutenants had been present at the inrolment. 11 G. 3. c. 32. s. 25.

8. By the 5 G. 3. c. 36. If any person, sworn and inrolled in the militia, shall inlist in his majesty's other forces; the overseer of the poor of the place for which he serves, shall, as soon as it comes to his knowledge, acquaint the adjutant therewith; who shall forthwith apply to a justice of the peace for the place for which such person is inrolled, to issue his warrant to apprehend such militia man; and such adjutant may send the serjeants and drummers to search for and apprehend him by virtue of such warrant: And any justice for any county or place where such militia man shall or may be found, shall indorse the said warrant (on application made to him for that purpose) and cause the said militia man to be apprehended and brought before him, or some other justice for the county or place where such militia man shall be apprehended: And if it shall appear upon oath to such justice, that the said person was inrolled to serve in the militia, at the time of his inlisting into his majesty's other forces, and did not acquaint the officer inlisting him therewith; such justice shall commit him to the house of correction of the place where he shall be so apprehended, there to be kept to hard labour not exceeding three months. s. 6.

Inlisting into
regulars.

And by the 7 G. 3. c. 17. If any officer, serjeant, or other person recruiting for men to inlist and serve in his majesty's other forces, shall wilfully and knowingly inlist any person, who at the time of such inlisting shall be inrolled and engaged to serve in the militia; every such inlisting shall be deemed null and void. And if any militia man shall deny to such recruiting officer or other person, that he is at the time of his offering to inlist a militia man then actually inrolled and engaged to serve (which the said officer or other person is hereby required to ask any man offering to inlist), and shall inlist in his majesty's other forces; he shall, on conviction on the oath of one witness before one justice for the place where such person was inrolled to serve in the militia, be committed to the common gaol of such place for any time not exceeding six months, over and above any penalty or punishment to which

which he shall be otherwise liable by law; and from the day on which his engagement to serve in the militia shall end, and not sooner, shall belong to the corps of his majesty's other forces into which he shall have been so inlisted. *f. 18.*

Soldier in the regulars offering to serve in the militia.

9. If any person serving in the regular forces shall offer himself to serve and be inrolled as a substitute in the militia; he shall, on proof upon oath before one justice, forfeit 10*l.* to the informer, to be levied by distress; for want of sufficient distress, the justice shall commit him to the common gaol for any time not exceeding 3 months. *9 G. 3. c. 42. f. 48.*

Servant ballotted and sworn, to be paid his wages.

10. If any servant, hired by the year or otherwise, shall serve in the militia; it shall be lawful for one justice, on complaint upon oath by such servant, to order so much of his wages as shall appear to such justice to be due, to be immediately paid him by his master or employer, in proportion to the service he has performed; and shall proceed therein as is directed by the statute of 20 *Geo. 2. c. 29. 2 G. 3. c. 20. f. 50.*

Substitute not discharged from serving again.

11. Provided always, that no militia man, having served as a substitute, shall by such service be excused from serving for himself, when he shall be chosen by lot. *2 G. 3. c. 20. f. 69.*

Principal discharged.

12. But no person, having served personally or by substitute three years in the militia, shall be obliged to serve again, until by rotation it comes to his turn. *2 G. 3. c. 20. f. 78.*

And when any substitute shall, after having been approved as aforesaid, before the expiration of the term for which he was to serve, die, or be appointed a serjeant, or be legally discharged; the person for whom he served shall not be obliged to serve himself, or to find another; but such vacancy shall be filled up, as in case of vacancies occasioned by the death or discharge of persons serving for themselves. *f. 61.*

XI. Forming the militia into regiments and companies.

Into regiments.

1. Within one month after the rolls are so returned from the deputy lieutenants and justices as aforesaid (to the second general meeting), there shall be a third general meeting; at which, they shall form and order the militia into regiments; consisting, where the number of militia men will admit the same, of twelve, but in no case of less than eight companies, of 80 men at the most, and 60

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XII. Pr

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men at the least, of persons living as near to each other as conveniently can be; and shall post to each company proper officers commissioned and qualified as aforesaid; that is to say, the field officers of a regiment shall be one colonel, one lieutenant colonel, and one major; and where the number of private men shall amount to five companies, or to any number under eight companies, such militia shall be formed into a battalion, with one lieutenant colonel, and one major, and no other field officer; (or where his majesty's lieutenant shall serve as colonel, then there shall be no lieutenant colonel, and his majesty's said lieutenant in such case shall be intitled to no other pay than that of a lieutenant colonel; 2 G. 3. c. 20. s. 28, 29.) in like manner, where the number of private men shall amount to three companies, or to any number under five companies, such militia shall be formed into a battalion with one lieutenant colonel or major, and no other field officer: And in each regiment or battalion of militia a number of captains, lieutenants, and ensigns, equal to the number of companies in such regiment or battalion (grenadier companies excepted, wherein there shall be one captain and two lieutenants.) s. 95.

2. Where the number shall not be sufficient to form a Independent regiment or battalion; they shall be formed into independent companies, each company to consist of 80 private men at the most, and 60 private men at the least, with one captain, one lieutenant, and one ensign, to each company: And his majesty may join together any number of such independent companies, and therewith form a battalion, or incorporate them with any regiment or battalion, but so as the number of companies in such regiment or battalion do not exceed, or fall short of, the number of companies of which a regiment or battalion is herein before allowed to consist. 2 G. 3. c. 20. s. 97.

XII. Proceedings where the militia have been already raised.

1. Where the militia has been, or shall be raised, General meeting there shall be a general meeting yearly on the last Tuesday in May, or the last Tuesday in October. 2 G. 3. c. 20. s. 57.

And if there shall happen to be no meeting on such day; his majesty's lieutenant together with two deputy lieutenants,

lieutenants, and on the death or removal or in the absence of his majesty's lieutenant three deputy lieutenants, when and as often as they shall find necessary, may summon or cause to be summoned a general meeting, on a day to be fixed by such summons; of which day and place, notice shall be given in the *London* gazette, and also in any weekly paper usually circulated in such county, 14 days at least before the holding of such meeting. 4 G. 3. c. 17. f. 1.

Subdivision
meetings.

2. At which general meeting, they shall appoint the times and places for holding four or more subdivision meetings in each year; and shall at the said general meeting cause new lists to be made and returned to the first of the said subdivision meetings, in the same manner as in places where the militia has not been raised. 2 G. 3. c. 20. f. 57.

And it shall be lawful, at a general meeting to be held after reasonable notice thereof given, to change or alter any subdivision meeting, whenever they shall find it convenient so to do. f. 65.

Also it shall be lawful, for three deputy lieutenants, or two deputy lieutenants with one justice, or one deputy lieutenant with two justices, upon any vacancy, by death or otherwise, to appoint a subdivision meeting, for the filling up such vacancies, giving seven days notice thereof. f. 60.

Provided, that in order to save the trouble of appointing subdivision meetings every year, in the several counties and places aforesaid; the subdivision meetings therein now appointed shall continue until the same shall be altered at some general meeting. f. 66.

Forming into re-
giments and
companies.

3. And where the militia has been already formed and ordered, his majesty's lieutenant together with two deputy lieutenants, shall, if the said militia shall be then disembodied, within two months after passing this act reform the same, according to the rules by this act prescribed for the first forming and ordering the militia; and if the same shall be embodied, then within two months after it shall be disembodied and returned to the respective counties, 2 G. 3. c. 20. f. 96.

Discharges.

4. If at any of the subdivision meetings, any private militia man shall shew just cause for his discharge, and being embodied, shall likewise produce a regular discharge from his commanding officer; the deputy lieutenants and justices shall and may discharge him; and in the stead of the persons so discharged, and also if there shall

shall be any other vacancy by death or otherwise, they shall, after having amended the lists in the same manner as is directed where the militia has not been raised, cause a like number to be chosen by lot, out of the lists of such places where the vacancies shall happen, unless such militia men shall be otherwise provided as is by this act directed. Which persons so chosen, or their substitutes provided and approved as aforesaid, shall take the oath required by this act to be taken, and every person so chosen shall be inrolled, and every substitute so provided shall subscribe his consent to serve, and shall serve for the space of three years, subject to the directions, provisions, and penalties in this act contained. 2 G. 3. c. 20. §. 59.

Provided, that if any militia man shall, during the time that the regiment or battalion shall be embodied, be discharged by the commanding officer; such discharge shall be sufficient to prevent such man from being liable to be apprehended as a deserter, but shall not extend to cause another man to be chosen in his place, unless he be likewise regularly discharged by the deputy lieutenant or deputy lieutenants and justices as aforesaid. §. 63.

For the purposes of swearing and inrolling, it shall be lawful for any one deputy lieutenant, at any place in the subdivision he usually acts in, to swear and enrol any substitute to serve for any place within his subdivision; provided he produce to such deputy lieutenant a certificate under the hands and seals of two other deputy lieutenants, or of one justice with one deputy lieutenant, or of two justices acting in or residing near the same subdivision, certifying that they have seen and do approve of such substitute as a proper person to serve in the militia: Provided also, that the clerk belonging to such subdivision shall and do attend with the roll, at such swearing and inrolling. §. 62.

And all such militia men, whose time of service shall be near expiring, during the time they shall be absent from the county or place to which they belong, shall be returned by the commanding officer to the county or place for which they served, so as that they may reach the said county by the expiration of their term. §. 64.

XIII. Training and exercise.

At what times.

1. The militia shall be trained and exercised in manner following; that is to say, by regiment or battalion twice in a year, 14 days at each time, or once in a year, for 28 days together, as shall be directed by his majesty's lieutenant and two deputy lieutenants, and on the death or removal or in the absence of his majesty's lieutenant, by three deputy lieutenants, at such time and place, as shall be least inconvenient to the publick, to be by them appointed at a general meeting: And during such time, all the provisions in any act for punishing mutiny and desertion and for the better payment of the army and their quarters, shall extend to and take place in respect of the officers and private men of every regiment or battalion; but not to extend to life or limb. 2 G. 3. c. 20. s. 99.

Notice of the time and place.

2. And notice of the time and place shall be sent by the clerk of the general meeting to the chief constables, with directions to forward the same to the constables or other officers of the several parishes or places; who shall cause such notice to be fixed on the doors of their churches or chapels respectively; or if any place being extraparochial, shall have no church or chapel belonging to it, on the door of the church or chapel of some parish or place thereto adjoining. 2 G. 3. c. 20. s. 103.

Due attendance there.

3. And all such militia men shall duly attend, at the times and places of exercise so to be appointed. 2 G. 3. c. 20. s. 103.

And if any militia man (not labouring under any infirmity incapacitating him) shall not appear; he may be apprehended, without any previous summons by warrant from one justice of the same county or place, or of any other county or place within which such offender shall be found, on oath made before such justice, that such militia man did not appear at the time and place aforesaid, and on producing also to the justice a certificate signed by the clerk of the subdivision meeting, that it appears to him by the roll in his custody, that the said defaulter is, or at the time of the offence committed was a militia man for the county wherein he ought to have appeared as aforesaid, mentioning in such certificate the date of his inrollment; and upon proof on oath made before the said justice of the handwriting of the said clerk: And if any militia man so apprehended as aforesaid, shall not prove to the satisfaction of the said justice, that he did at the time appointed for such

such appearance labour under some infirmity incapacitating him; or that he had then changed his place of abode and removed upon notice and certificate as is above directed, into the subdivision wherein he shall be dwelling at the time of his being so apprehended; or that he, at the time of such default of appearance, was inrolled also to serve in the militia of some other county or place, and hath thereby forfeited and paid the penalty of 10*l*. inflicted for that offence by the 4 G. 3. c. 17; he the said defaulter (not making satisfactory proof as aforesaid of one or other of the said three causes of excuse) shall stand immediately convicted by the said justice before whom he shall be brought (whether the said justice be of the same or of some other county or place); and the said justice shall then require and demand of him the immediate payment of the penalty of 20*l*.; and on refusal or neglect to pay the same into the hands of the said justice, or of such person as he shall then direct, for the use of the regiment or battalion wherein such defaulter was inrolled, to serve as part of the common stock of such regiment or battalion, the said justice shall commit him to the common gaol of the county or place where he shall be so convicted, there to remain without bail or mainprize for six months, or until he shall have paid the said penalty of 20*l*. 2 G. 3. c. 20. *f*. 103. 5 G. 3. c. 34. *f*. 15.

Provided, that no officer or private man shall be liable to any penalty or punishment, on account of his absence during the time he shall be going to vote at any election of a member to serve in parliament, or returning from such election. 2 G. 3. c. 20. *f*. 111.

4. If any militia man, having joined the corps, shall desert during the time of annual exercise, and not be apprehended during the time of such exercise; he shall incur the penalty and be subject to the punishment above inflicted on militia men not joining their corps. 4 G. 3. c. 17. *f*. 6.

Deserting during the time of exercise.

And one justice, in any county or place where such deserter shall be found, may proceed against him in the same manner, and execute the like powers, as in the case of not appearing at the annual exercise. 5 G. 3. c. 34. *f*. 16.

5. And when the militia shall be called out to be trained Carriages. and exercised, it shall be lawful for a justice of the peace, being duly thereunto required by an order from his majesty, or from his majesty's lieutenant, or a deputy lieutenant,

tenant, or from the colonel or other chief commission officer upon the place, of any regiment, company or detachment of militia, to issue out his warrant under his hand, to the chief constables, petty constables or other officers of the hundreds, parishes, tithings or places; from, through, near or to which, any such regiment or company of militia men, or any detachment thereof, shall be ordered to march, requiring them to make such provision for carriages of the arms, clothes, accoutrements, powder, match, bullets, or other warlike materials, with able men to drive such carriages, as is and are mentioned in the said order: but in case such sufficient carriages and men cannot be provided within any such county, riding, hundred, rape, lath, wapentake, division, parish, tithing, or place; then the next justice shall, upon such order as aforesaid being shewn unto him, issue his warrant to the chief constables, petty constables, or other such officers of the next county, riding, hundred, rape, lath, wapentake, division, parish, tithing, or place, for the purposes aforesaid, to make up such deficiency of carriages. 2 G. 3. c. 20. *f. 123.*

And such lieutenant, deputy lieutenant, colonel or other chief commission officer upon the place, who by virtue of the said warrant from the said justice shall demand such carriages of such officer as aforesaid, shall at the same time pay down to him in hand for the use of the person who shall provide such carriages and men, the sum of 1 s. for every mile any waggon with five horses shall travel; and 1 s. for every mile any wain with six oxen, or with four oxen and two horses, shall travel; and 9 d. for every mile any cart with four horses shall travel; and so in proportion for carriages drawn by a less number of horses or oxen: for which the officer shall give a receipt. *id.*

And such chief constable, petty constable, or other officer, shall order and appoint such person or persons having carriages within their respective divisions, as they shall think proper, to provide and furnish such carriages and men according to such warrant; which persons so ordered shall provide and furnish the same accordingly, for one day's journey, and no more. *id.*

And in case the said chief constables, petty constables, or other officers, shall be at any charges for such carriages, over and above what is so received by them of the said lieutenant, deputy lieutenant, colonel, or other chief officer as aforesaid; such overplus shall be borne by each county,

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county, riding or place, where such additional expence shall be incurred, and be repaid to them without fee by the treasurer out of the publick stock. *id.*

And if any such chief constable, constable, or other officer shall wilfully neglect or refuse to execute such warrant; or if any person appointed by such chief constable, constable, or other officer, to provide or furnish any such carriage and man, shall wilfully neglect or refuse to provide the same; he shall forfeit a sum not exceeding 4 s. nor less than 20 s. to the use of the poor of the parish or place where such offence shall be committed: the same to be heard and determined by two justices; and the penalty to be levied by their warrant by distress. *f. 124.*

6. It shall be lawful for the mayors, bailiffs, constables ^{Billeting.} and other chief magistrates and officers of cities, towns, parishes, tithings, villages, and other places, and in their default or absence for a justice of the peace inhabiting in or near such place, and for no others; and they are hereby required, to quarter and billet the officers and private men, at the times when they shall be called out to annual exercise, in inns, livery stables, alehouses, victualling houses, and all houses of persons selling brandy, strong waters, cyder, wine, or metheglin, by retail; on application to them made by the lieutenant, or by the colonel or commanding officer. 2 G. 3. c. 20. *f. 100.*

In like manner, the serjeants, drummers, and fifers, shall be billeted; and the occupiers of the houses where they shall be billeted, shall provide for them, at such times for which no provision has by law been made for that purpose, convenient lodgings only. *f. 101.*

7. And whereas it would be conducive to the preservation of order and discipline during the time of annual exercise, of great convenience to the corporals and private men in supplying them with necessaries, and of essential utility to their families, if the captains or commanding officers were enabled to stop a limited part of the daily pay of such corporals and private men; it is enacted, that it shall be lawful for every captain or commanding officer of the militia, to put the corporals and private men of his company under stoppages, not exceeding 6 d. a day, for the purposes aforesaid: Provided, that such captain or commanding officer shall account with the said corporals and private men for the said stoppages, before they shall be dismissed from the said annual exercise; having first deducted what shall have been laid out for them for necessaries ^{Stoppages of pay during the time of exercise.}

Arms and
clothes to be
deposited.

ries and repair of arms damaged by their neglect. 4 G. 3. c. 17. §. 7.

8. All muskets delivered for the service of the militia shall be marked with the letter M, and the name of the county or place to which they belong. 2 G. 3. c. 20. §. 108.

And the captain of each company shall keep in his own custody, or leave and deposit with the several serjeants belonging to his company, or with such persons as the said captain shall appoint, the arms, clothes, and accoutrements provided for his company; and the churchwardens of every parish or place where the said arms, clothes and accoutrements are so deposited, or one of them, shall provide at the expence of such parish or place, a chest, in which such captain, serjeant or other person so appointed as aforesaid shall keep the said arms in some dry part of his house or dwelling, under lock and key; and another chest in which he shall keep under lock and key the said clothes and accoutrements: and the serjeant or other person appointed to train and discipline the men, shall take care that after exercise every militia man shall clean and return his arms, clothes and accoutrements, to his captain, or to such person as shall be appointed as aforesaid to receive the same. §. 104.

And if the serjeant, or other person appointed by any captain of the militia to receive and keep in his custody the said arms, clothes and accoutrements, shall not complain within three days to a neighbouring justice, of any militia man's not having returned his arms, clothes and accoutrements as before directed; he shall, on conviction before one justice, forfeit 20 s. which if he shall not immediately pay, the same shall be levied by distress by warrant of such justice. §. 112.

Provided, that his majesty's lieutenant, or in his absence three deputy lieutenants may by their warrant employ such persons as they shall think fit, to seize and remove the arms, clothes and accoutrements, belonging to the militia, whenever such lieutenant or deputy lieutenants shall judge it necessary to the peace of the kingdom; and to deliver the same into the custody of such persons, as the said lieutenant or deputy lieutenants shall appoint to receive the same, for the purposes of this act. §. 105.

And if any serjeant, or any other person intrusted by the captain, with the custody of any arms, clothes or accoutrements belonging to the militia, shall deliver any of them out, unless for exercising the men, or by the command

mand of his superior officer; it shall be lawful for two justices, to commit him to the common gaol, for any time not exceeding six months. *f. 106.*

9. And if any militia man shall sell, pawn, or lose any of his arms, clothes or accoutrements; he shall, on conviction before one justice, forfeit a sum not exceeding 3*l.* and if he shall not immediately pay the same, such justice shall commit him to the house of correction for one month, and until satisfaction shall be made for the same; and if he shall not be of ability to make such satisfaction, then for the space of three months. *2 G. 3. c. 20. f. 109.*

Pawning or
losing the same.

And if any militia man shall refuse or neglect to return his arms, clothes and accoutrements in good order, to his captain, or to such person as shall be appointed as aforesaid to receive the same, whenever demanded; he shall, on conviction before one justice forfeit 10*s.* and if he shall not immediately pay the same, such justice shall commit him to the house of correction for any time not exceeding 14 days. *f. 109.*

And if any person shall knowingly and willingly buy, take in exchange, conceal or otherwise receive, contrary, to the true intent and meaning of this act, any arms, clothes or accoutrements belonging to the militia, upon any account or pretence whatsoever; he shall, on conviction before one justice, forfeit 5*l.* and if he shall not immediately pay the same, the said justice shall levy the same by distress; and for want of distress, shall commit him to the common gaol for three months, or shall cause him to be publickly whipt, at the discretion of such justice. *f. 110.*

10. And the serjeants shall receive all their military orders with respect to training the militia men under their care, from the adjutants, and their superior officers; and shall report from time to time all crimes and misdemeanors of the several militia men under their command, to their adjutant or superior officers, or to any two deputy lieutenants, or to some civil magistrate, as the case shall require. *2 G. 3. c. 20. f. 113.*

Penalty on non-
commission offi-
cers not doing
their duty.

And if any non-commission officer shall be negligent in his duty, or insolent, or disobedient to the orders of the adjutant, or other his superior officer, and be thereof convicted as aforesaid upon the oath of the adjutant or other superior officer before on justice; he shall forfeit any sum not exceeding 30*s.* at the discretion of such justice; and if he shall not immediately pay the same, the said justice shall commit him to the house of correction for 14 days;

Return to be
made to the
Lieutenants.

days; and his majesty's lieutenant may discharge such non-commission officer if he shall think fit. *f. 114.*

11. And the colonel or commanding officer of every regiment or battalion of unembodied militia shall, as often as they shall be called out to exercise, return to his majesty's lieutenant a true state of such regiment or battalion. *2 G. 3. c. 20. f. 102.*

Return to a se-
cretary of state,

12. And also shall, within 30 days after the exercise shall be finished, transmit to one of the secretaries of state, a return signed by him, of the several officers, non-commission officers, and private men, who were inrolled and did serve at the time of exercise aforesaid, in manner and form following:

Return

Return of a regiment of militia at annual exercise.

Commissioned officers		Staff officers	Non-commissioned officers	Private
Present Absent Wanting to complete }	Colonel	Adjutant	Serjeants	Private
	Lieutenant colonel		Corporals	
	Major		Drummers	
	Captains			
	Captain lieutenant			
	Lieutenants			
	Ensigns			

6 G. 3. c. 30. s. 15.

And in the said return he shall specify the number of days on which each of the commissioned officers was present during the time of annual exercise; and the secretaries of state shall cause copies thereof to be annually laid before both houses of parliament: which part of the return shall be in this form,

	N ^o of days.
Colonel _____	
Lieutenant colonel _____	
Major _____	
First captain _____	
Second captain _____	

And so of the rest. 9 G. 3. c. 42. s. 51, 52.

Return to the
auditor of the
exchequer.

13. He shall also, within 30 days after the exercise shall be finished, transmit to the auditor of the exchequer a return signed by him, of the several officers, non-commissioned officers and private men, who were inrolled and did serve at the time they were so exercised, in like manner as to a secretary of state. 10 G. 3. c. 9. s. 8.

Return to the
sessions.

14. Finally, his majesty's lieutenant or three deputy lieutenants shall, on or before Dec. 25. certify to the clerk of the peace, that the militia for such county or place has been raised, and when and at what time the same was first raised; the names, number, and rank of officers, and the number of private men, in the year when such certificate is made, and the time of exercise in that year. Which certificate the clerk of the peace shall deliver to the justices at their sessions to be held next after the said 25th of December, on the day on which such sessions shall be opened; and shall file the same amongst the records, that the true state of the militia in that county may appear. 6 G. 3. c. 30. s. 19. 9 G. 3. c. 42. s. 18.

And he shall, within 14 days after the said session, transmit to the commissioners of the treasury, and also to the receiver general, a copy signed by such clerk of the peace of every such certificate so delivered to him. s. 23.

And if he shall neglect or refuse to receive, deliver, file, record, or transmit any such certificate; he shall forfeit 500 l. to him who shall sue; and shall forfeit his office; and be incapacitated. s. 24.

XIV. Cloathing and pay.

1. No pay, arms, accoutrements, or cloathing shall be ^{When to issue.} issued, and no adjutant or serjeant shall be appointed, until it shall appear by a return signed by his majesty's lieutenant, or, on the death or removal or in the absence of his majesty's lieutenant, by three deputy lieutenants, that three fifths of the militia men have been inrolled, and three fifths of the officers have taken out commissions. 2 G. 3. c. 20. s. 107.

2. The pay of the embodied militia will be specified ^{In what manner} when we come to treat of their being drawn out into ac- ^{and proportion} tual service.

The pay of the unembodied militia hath been directed by annual acts for that purpose: The last of which, viz. 11 G. 3. c. 32. is as followeth; Whereas it is necessary that provision should be made for defraying the charge of the pay and cloathing for the militia, for one year from *Mar. 25, 1771*; it is enacted, that in every place where the militia is or shall be raised, the receiver general of the land tax for such place shall issue and pay as followeth:—For the pay of the said militia for 4 calendar months in advance, at the rate of 6 s. a day for each *adjutant*; 1 s. for each *serjeant*, with the addition of 2 s. 6 d. a week for each *serjeant major*; 6 d. a day for each *drummer*, with the addition of 6 d. a day for each *drum major*; and at the rate of 6 d. a month for each private man and drummer for defraying *contingent expences*, one penny whereof to be applied to the hospital expences when they are out upon their annual exercise; and for half a year's salary for the *clerk of the regiment or battalion* at the rate of 50 l. a year; and to the *clerk of the general meetings* at the rate of 5 l. 5 s. for each meeting; and to the several *clerks of the subdivision meetings* at the rate of 1 l. 1 s. for each meeting; and also for *cloathing*, after the rate of 3 l. 10 s. for each *serjeant*, and 2 l. for each *drummer*, with the addition of 1 l. for each *serjeant major* and *drum major*; and with respect to the private militia men, where they have not been cloathed within three years, at the rate of 1 l. 10 s. for each private man.—Provided nevertheless, that in any place where pay has not yet been issued, no pay shall be issued, until his majesty's lieutenant, or in his absence three deputy lieutenants, shall have certified to the commissioners of the treasury, and to the receiver general of the land tax, that three fifths of the number of

private men have been inrolled, and that three fifths of the proportion of their commission officers have accepted their commissions and entred their qualifications.

All which sums of money aforesaid (except what shall be due to the clerks of the meetings, and except what shall be due for cloathing) shall, where the militia has never been embodied, be paid by the receiver general into the hands of the clerk of the regiment or battalion, on his producing his warrant of appointment to such office under the hand and seal of his majesty's lieutenant; and where the militia has been embodied, into the hands of the clerk of the regiment or battalion, on his producing his warrant of appointment to such office under the hand and seal of the colonel, or, where there is no colonel, of the commanding officer, notwithstanding such militia shall have been disembodied; and where the militia shall be formed into independent companies, such sums shall be paid by the receiver general into the hands of the respective captain of such independent company, or to such person as such captain shall authorize to receive the same.

And the said receiver general shall also, within 14 days after the expiration of the third calendar month from the time of the said first payment, make a second payment for four calendar months in advance; and, within 14 days after the expiration of the third calendar month from the time of the said second payment, make a third payment for four calendar months in advance; for the pay and contingent expences of the militia, and for the allowances to the regimental or battalion clerk: and the receipt of such clerk, and of such captain of an independent company or of the person authorized by him as aforesaid to receive the same, shall be a sufficient discharge to the receiver general.

And the clerk of the regiment or battalion shall forthwith after the receipt of such sums as aforesaid, pay or cause to be paid one calendar month's pay in advance to the adjutant; and to the captain or commanding officer of each company two months pay in advance for the serjeants, and drummers; and also to the commanding officer of the company to which the serjeant major and drum major shall belong, two months pay in advance for such serjeant and drum major; and so from time to time so long as any money on that account shall remain in his hands.

Which pay, every such captain or commanding officer shall distribute to each person belonging to his company, as it shall become due; and shall once in every year give
in

(New) Militia.

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in to the clerk of the regiment or battalion, (or if captain of an independent company, to the receiver general) an account of the several payments he shall have made in pursuance of this act, according to the following form:

County of — Dr.		Per Contra — Cr.	
To cash received of Mr. —		Paid serjeant —	
regimental or battalion clerk, or receiver general (as the case shall be) for two months pay in advance.		for — days pay from the — day of — to the — of — following.	
		Ditto as serjeant major.	
		Paid — drummer — days at 6d. from the — of — to the — of — following.	
		Ditto as drum major. - -	

And shall pay back to the said clerk or to the receiver general, as the case shall be, the surplus (if any) remaining in his hands.

Provided, that in case the commanding officer of any regiment, battalion, or independent company shall certify in writing to the clerk of the same, that he hath discharged any serjeant or drummer as unfit for service; in such case no pay shall be issued for the person so discharged, until another be duly appointed by him: And that no payment be made to any serjeant or drummer who hath been so discharged, or who hath not previously been approved of by the commanding officer, in case of vacancy by death or otherwise.

And the clerk of each regiment or battalion, out of the money hereby directed to be paid to him for defraying the contingent expences, shall yearly pay to the colonel or commanding officer one penny *per* month for each private man and drummer, for defraying the *hospital expences* during the time of the mens being absent from home on account of their annual exercise; and shall from time to time pay such sums as may be necessary for the *repair of arms*, and the *carriage* and removal thereof, upon an order in writing signed by the colonel or commanding officer; and apply the residue for the general use and benefit of the regiment

giment or battalion, in such manner as the field officers and captains thereof, or the greater part of them, shall direct: and shall yearly make up an account of all such money and the expenditure thereof, and deliver the same to the colonel or commanding officer, to be by him examined, allowed, and signed; which account so allowed and signed shall be the proper voucher and acquittal of such clerk, for the application and disposal of such money.

And the money hereby directed to be issued for the contingent expences of each independent company shall be in like manner applied to the particular use of such independent company by the captain thereof; and shall yearly be in like manner accounted for to the receiver general, whose allowance of such account shall in like manner be the proper voucher for the expenditure and disposition thereof.

And the said regimental or battalion clerk may retain to his own use, out of the money so by him received, such further sums as shall complete the allowance herein before made for his salary.

And the receiver general, so soon as he shall receive a warrant under the hand of the colonel or commanding officer certifying the receipt of the cloathing, and an order from the said colonel or commanding officer for the money due for the same payable to the person who furnished the said cloathing, shall pay the sum mentioned in such order to the person intitled to receive the same; who shall give a receipt: Which warrant, order, and receipt, shall be a discharge to the receiver general.

And whenever his majesty's lieutenant, or any three or more deputy lieutenants, shall have fixed the days of exercise*, they shall, as soon as may be, certify the same to the

* Here seems to be a mistake. The days of exercise are to be fixed (as is above expressed) by his majesty's lieutenant and two or more deputy lieutenants, and on the death or removal or in the absence of his majesty's lieutenant by three or more deputy lieutenants, at a general meeting. This clause supposeth, that his majesty's lieutenant alone, or any three or more deputy lieutenants, may appoint such time. By the statute of the 3 G. 3. c. 10. power was given for that particular year, by reason of inconveniences that might happen from waiting until the time then limited for the general meeting, to his majesty's lieutenant on or before the 30th of April to fix the time for training and

the receiver general, specifying the number of men, and the number of days they are to be absent from home on account of such exercise; which receiver general shall, within 14 days after the receipt of such certificate, pay to the clerk of the regiment or battalion, at the rate of 7 s. 6 d. a day for each captain, and at the rate of 3 s. 6 d. a day for each lieutenant, and of 3 s. a day for each ensign; and also at the rate of 1 s. a day for each private man, with the addition of 6 d. a day for each corporal, for the number of days they shall be absent on account of exercise; and in such counties where there shall be independent companies only, the receiver general shall pay to the captains of the independent companies, at the rate of 7 s. 6 d. a day for each captain, and so of the rest; and the said regimental or battalion clerks shall forthwith pay to each captain of the said regiments or battalions the proportion of pay belonging to each captain, and likewise the pay belonging to their respective companies.

And each captain shall make up an account of all money by him received on account of such exercise, according to the following form:

County of — Dr.		Per Contra — Cr.	
To cash received of — the regimental or battalion clerk, (or, — receiver general, as the case shall be) for — days pay of — men —	l. s. d.	By my pay as? captain	l. s. d.
		Paid lieutenant —	
		Paid ensign —	
		Paid — mi-	
		litia men —	
		days —	
		Paid additional	
		pay to — corpo-	
		rals — days	

Which account shall be signed by such captain, and countersigned by the commanding officer; and the said

and exercise; and if he should not within that time fix the same, then three or more deputy lieutenants were to do it. And in that case these words were proper — “Whenever his majesty’s lieutenant, or any three or more deputy lieutenants, shall have fixed the days of exercise” — But this was restricted to that year only. And these words in the present act are transcribed from the act in that year; though the circumstances are very different.

captain shall within ten days after the time of such exercise, deliver such account, and pay the balance (if any) to the regimental or battalion clerk; or if captain of an independent company, to the receiver general.

Provided always, that where any regiment, battalion or independent company of militia, shall be embodied and called out into actual service, and thereby the officers and private men shall be intitled to the same pay as the officers and private men in his majesty's other regiments of foot receive; all pay from the receiver general, whether to the adjutants, serjeants, private militia men or others, and all money allowed as aforesaid for contingent expences, and also the allowance to the clerk of the regiment or battalion, shall during such time of actual service cease and not be paid.

And the receiver general shall pay to the clerk of the general meetings his allowance, at the rate of 5 l. 5 s. for each meeting on his producing an order for that purpose from his majesty's lieutenant, or from three deputy lieutenants assembled at a general meeting.

And shall also pay to each and every the clerks of the subdivision meetings, their several allowances at the rate of 1 l. 1 s. for each meeting; on his or their producing an order or orders respectively, from one or more deputy lieutenants assembled in the several subdivision meetings: which order shall be a sufficient discharge to the receiver general, and be allowed in his account.

Provided always, that the regimental or battalion clerk shall give security to the receiver general, by bond to his majesty, in penalty of one half of the sum required for the whole year's charge of the regiment or battalion, for duly answering and paying such sums as he shall from time to time receive, and for duly accounting for the same, and for the performance of his trust; which bond shall be lodged with the receiver general, and by him in case of failure shall be put in suit.

And the said clerk of the regiment or battalion, and the captain of every independent company of militia, shall between *Mar. 25.* and *June 24. 1768*, deliver to the receiver general a fair account in writing, of all money by him received and disbursed for the service of the preceding year in pursuance of this act, with proper vouchers for the same; and shall pay back to him any surplus that shall then be in his hands: which said accounts, signed by such clerk, or such captain of an independent company respectively

specifically, shall be transmitted by the receiver general into the office of the auditor of the revenue.

And all penalties, costs and charges of suit, and sums of money for which any person is by this act made answerable, may be recovered in any of his majesty's courts of record at *Westminster*.

And no fee or gratuity shall be given or paid, for any warrant or sum of money, which shall be issued in pursuance of this act.

And any person being on half pay, or being intitled to any allowance as having served in an — or either of the two troops of horse guards or regiment of horse reduced, and serving in the militia, may receive the subsistence money payable to captains, lieutenants, or ensigns; and it shall not prevent him from receiving his half pay or such allowance, he taking the following oath before a justice, “ I A. B. do swear, that I had not between the ——— any place or employment of profit, civil or military, under his majesty, besides my allowance of half pay as a reduced ——— in ——— late regiment of ——— (or allowance as ——— in ——— late troop of horse guards, or ——— regiment of horse reduced) save and except my subsistence as a lieutenant or ensign [as the case may be], for serving in the militia of the county of ———.” And the taking the said oath shall intitle him to receive his half pay, without taking any other oath.

[Note, in the form of the oath above, the word *captain* seems to have been omitted by mistake, for the context seems to require that the words shall run thus—*save and except my subsistence as a captain, lieutenant, or ensign.*]

Finally, if any regiment, battalion or independent company shall cease and determine during the continuance of this act; 3 s. a day shall be allowed to the adjutant, until the 25th day of March 1771.

XV. Drawn out into actual service.

1. In case of actual invasion, or upon imminent danger thereof, or in case of rebellion, it shall be lawful for his majesty (the occasion being first communicated to parliament, if the parliament shall be then sitting; or declared in council, and notified by proclamation, if no parliament shall be then sitting or in being) to order his lieutenants, and on their death or removal or absence three deputy lieutenants,

To be drawn out
in case of invasion
or rebellion.

lieutenants, with all convenient speed, to draw out and embody all the regiments and battalions of militia of their respective counties, ridings or places, a ready raised and not yet embodied, or herein appointed to be raised and trained, or so many of them as he shall judge necessary, in such manner as shall be best adapted to the circumstances of the danger. 2 G. 3. c. 20. f. 116.

Parliament then
to meet.

2. And if at such time the parliament shall happen to be separated, by such adjournment or prorogation as will not expire within fourteen days; it shall be lawful for his majesty to issue a proclamation, for the meeting of the parliament upon such day as he shall thereby appoint, giving fourteen days notice of such appointment: and the parliament shall accordingly meet upon such day, and continue to sit and act, in like manner to all intents and purposes, as if it had stood adjourned or prorogued to the same day. 2 G. 3. c. 20. f. 117.

To be put under
the command of
general officers.

3. And in such case, his majesty may direct the said forces to be put under the command of such general officers as he shall appoint. 2 G. 3. c. 20. f. 116.

And led to any
part of the king-
dom.

4. And direct them to be led by their respective officers, into any parts of this kingdom, for the suppression of such invasions and rebellions. 2 G. 3. c. 23. f. 116.

But not to go
out of the king-
dom.

5. Provided, that neither the militia of this kingdom, nor any corps, detachment or draught thereof shall, on any account, be transported or carried out of the island of Great Britain. 2 G. 3. c. 20. f. 125.

To be subject to
the acts against
mutiny and de-
sertion.

6. And the said officers of the militia, and private militia men, shall from the time of their being drawn out and embodied as aforesaid, and until they be returned again to their respective parishes or places of abode, remain under the command of such general officers; and shall be intitled to the same pay as the officers and private men in his majesty's other regiments of foot receive, and no other; and the officers of the militia shall, during such time, rank with the officers of his majesty's other forces of equal degree with them, as the youngest of their rank; and during such time as aforesaid, all the provisions contained in any act of parliament then in force for punishing mutiny and desertion, and for the better payment of the army and their quarters, shall extend to the officers and private militia men (except only as to such particulars as are or shall be otherwise specially provided for by any act or acts of parliament for regulating the militia forces); and when they shall be returned again to their respective parishes or places of abode, they shall be under the same

orders

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orders and directions only, as they were before they were drawn out and embodied as aforesaid. 2 G. 3. c. 20. f. 116.

Provided, that no officer serving in the militia, shall sit in any court martial upon the trial of any officer or soldier serving in any of his majesty's other forces; nor shall any officer serving in any of his majesty's other forces, sit in any court martial upon the trial of any officer or private man serving in the militia. f. 121.

7. And his majesty's lieutenant, and on the death or ^{Penalty of not} removal or in the absence of his majesty's lieutenant three ^{appearing.} deputy lieutenants, shall issue their orders to the chief constables, with directions to forward the same immediately to the constables or other officers of the several parishes or places; and such constables shall, upon receipt thereof, forthwith give, or leave in writing, notice, or cause such notice to be given, to the several militia men, or left at the usual places of their abode, to attend at the time and place mentioned in such order. 2 G. 3. c. 20. f. 116.

And if any militia man so ordered to be drawn out and embodied as aforesaid (not labouring under any infirmity incapacitating him to serve as a militia man) shall not appear and march in pursuance of such order; he shall, on conviction before two justices, forfeit 40 l. and if he shall not immediately pay the same, they shall commit him to the common gaol for twelve months, or until he shall have paid the same. *id.*

And if any person shall harbour or conceal any militia man, not attending when ordered into actual service, knowing him to be a militia man; he shall, on conviction before one justice, forfeit 5 l. by distress; and for want of sufficient distress, such justice shall commit him to the house of correction for two months, or cause him to be publicly whipped. *id.*

8. When the militia shall be ordered out into actual service, or shall be out in actual service, the receiver general of the land tax for the respective county or place, shall pay to the captain or other commanding officer of such company so ordered out or being out in service, one guinea for each private militia man belonging to his company; to be paid over by such captain or other officer to every such private militia man who belonged to his company at the time such militia was ordered out, on or before the day appointed for marching; and to such militia man, who shall be afterwards ordered out, when he shall join his company. 2 G. 3. c. 20. f. 122.

To receive one guinea when ordered to march.

To receive likewise a sum from the proper parish.

9. In case any person shall be chosen by lot, and be sworn and inrolled, or provide a substitute who shall be sworn and inrolled, the churchwardens or overseers of the place for which he serves, shall within one month after such swearing and inrolling of the man so chosen by lot or of his substitute, pay to every such person so chosen by lot, if the regiment or battalion shall be then embodied, any sum not exceeding 5 l. as three deputy lieutenants, or two deputy lieutenants and one justice, or one deputy lieutenant and two justices, in whose presence such person shall be chosen by lot, shall adjudge to be, as near as may be, one half of the current price then paid for a volunteer in the county or riding where such person shall be chosen: which sum shall be taken out of the rate made for volunteers, or if no volunteers shall be provided by the churchwardens or overseers of such parish or place, then out of a rate to be made by the rule aforesaid. 2 G. 3. c. 20. *f. 47.*

Provided, that if such man so chosen by lot, and serving for himself, shall within one month after his inrollment be disapproved of and discharged by the commanding officer; no such sum shall be paid to the person so chosen by lot, but shall be paid to the next person chosen by lot in his stead: and if the substitute he shall have found be disapproved in manner aforesaid, then no such sum shall be paid to the man so chosen by lot, unless he shall serve himself or find another substitute. *f. 48.*

Provided also, that no person so chosen by lot shall be intitled to the one half of the said current price of a volunteer, without the order of the persons aforesaid under their hands. *f. 49.*

Pay to commence from the date of the king's warrant.

10. And the officers and private men who shall be drawn out and embodied, shall be intitled to pay from the day of the date of the king's warrant for that purpose. 2 G. 3. c. 20. *f. 118.*

Volunteers.

11. And when they shall be ordered out into actual service as aforesaid; it shall be lawful for the captain of any company, to augment his company, by incorporating, with the consent of his majesty's lieutenant, or in his absence of two deputy lieutenants, any number of persons who shall offer themselves as volunteers, and who shall appear to him to be sufficiently trained and disciplined, and provided with proper cloaths, arms and accoutrements, and who shall take the said oath, and sign their consent to serve in the militia for the time of such actual service,

service, and to submit to the same rules and articles of war as militia men are by this act liable to during the time of their continuing in actual service. 2 G. 3. c. 20. f. 120.

XVI. Privileges and exemptions of militia men.

1. No person, during the time he is acting as a militia officer, shall be obliged to serve the office of sheriff. 2 G. 3. c. 20. f. 34. Officers exempted from the office of sheriff.
2. No serjeant or private man, serving in the militia, either for himself or as a substitute, shall during the time of such service, be liable to do any highway duty, commonly called statute work. 2 G. 3. c. 20. f. 76. Private man exempted from highway duty.
3. Or be appointed to serve, as a peace officer, or parish officer. *id.* From offices.
4. Nor shall be liable to serve, in any of his majesty's land or sea forces, unless he shall consent thereto. *id.* From serving in the other forces.
5. If any man, serving in the militia, shall, on the march, or at the place where he shall be called out to annual exercise, be disabled by sickness or otherwise; it shall be lawful for one justice, or mayor, where such man shall then be, by his warrant to order him such relief as he shall think reasonable: And the officers of the parish or place where such militia man shall be so relieved, on producing an account of the expences occasioned thereby, allowed under the hand of a justice, to the treasurer of the county or place for which such man shall serve, shall be reimbursed the same by the said treasurer out of the county stock. 4 G. 3. c. 17. f. 5. Falling sick.
6. If any militia man, who shall have been chosen by lot, shall, when embodied and called out into actual service, and ordered to march, leave a family unable to support themselves, the overseers of the poor of the parish, tithing or township where the family of such militia man shall dwell, shall by order of one justice, out of the poor rates of such place, pay to such family a weekly allowance, according to the usual and ordinary price of labour in husbandry within the county, riding, division, district or place where such family shall dwell, by the following rule; that is to say, for one child under the age of ten years, any sum not exceeding the price of one day's labour; for two children under the age aforesaid, any sum not exceeding the price of two days labour; for three or four children under the age aforesaid, any sum Leaving families.

not exceeding the price of three days labour; for five or more children under the age aforesaid, any sum not exceeding the price of four days labour; and for the wife of such militia man, any sum not exceeding the price of one day's labour; and the same shall be forthwith reimbursed to such overseer, by the treasurer of the county, riding or place where such parish, tithing or township shall be situate, out of the publick stock. 2 G. 3. c. 20. *f.* 81.

And the treasurer of every county, riding, division, and place, shall keep distinct accounts of all the monies by him reimbursed to such overseers as aforesaid; and shall at the end of seven calendar months from the passing of this act, and afterwards at the end of every six calendar months, return the said accounts, together with the accounts which he shall have received from the several treasurers of the cities, towns, liberties, or places, to the office of the treasurer's remembrancer of the court of exchequer. *f.* 82.

And in all cities, towns, liberties, divisions and places, which are not liable to contribute to the county rates by virtue of the act of the 12 G. 2. c. 29. the justices of the peace for every such city, town, liberty, division and place, at any sessions or meeting, may and shall appoint a treasurer, and shall assess upon every parish, tithing, township, hamlet or vill, within their jurisdictions, in such proportions as the rates heretofore made for the relief of the poor have been usually assessed, and shall cause to be paid out of the money collected and levied for the relief of the poor of every such parish, tithing, township, hamlet or vill, into the hands of such treasurer, such sums as they in their discretion shall think sufficient for reimbursing to the overseers of the poor of the several parishes, tithings, townships, hamlets or vills within their jurisdictions, the amount of the weekly allowances paid by such overseers to the families of the militia men residing within their jurisdictions; and every such treasurer shall forthwith reimburse the same to every such overseer accordingly. And such treasurer shall keep distinct accounts of all monies so paid into his hands, and by him reimbursed to such overseer as aforesaid; and shall, at the end of every six calendar months, transmit the said accounts to the treasurer of the county or riding which such city, town, liberty, division or place is by this act united with and made part of for the purposes of the said act. (Provided that the treasurer of the city of Lincoln and county of

of the said city, shall transmit his accounts to the treasurer of the division of Lindsey with the county of Lincoln.) *f.* 83.

Provided, that within the city and county of the city of Exeter, the allowances to the families shall be paid by the treasurer of the corporation of the governor, deputy governor, assistants and guardians, of the poor of the city and county of Exeter. *f.* 84.

And the monies to be levied by parish rates within the city and county of the city of Bristol, by virtue of this act, shall be raised as other money for the relief of the poor there by virtue of any act or acts of parliament relating thereto. *f.* 85.

And the treasurer of any county, riding, city, town, liberty, division or place, who shall after the passing of this act reimburse to any overseer as aforesaid any sum of money in pursuance of this act, on account of the weekly allowance to the family of any militia man serving in the militia of any county, riding, city, town, liberty, division or place, other than the county, riding, city, town, liberty, division or place where such family shall dwell, shall deliver or transmit an account of such money as he shall have so reimbursed as aforesaid, signed by one or more justices of the place where such family shall dwell, to the treasurer of the county, riding, city, town, liberty, division or place, in the militia whereof such militia man shall serve; and thereupon the treasurer to whom such account shall have been delivered or transmitted, shall pay to the treasurer who shall have so delivered or transmitted such account, the sums so by him reimbursed to such overseers of the poor, and shall be allowed the same in his accounts. *f.* 86.

7. If any non-commission officer, or private militia man, shall be maimed or wounded in actual service; he shall be equally intitled to the benefit of Chelsea hospital, with any non-commissioner officer or private soldier belonging to his majesty's other forces. 2 G. 3. c. 20. *f.* 116.

8. And also every such person, having served in the militia when called out into actual service; and being a married man, may set up and exercise any such trade as he is apt and able for, in any town or place within Great Britain or Ireland, without any molestation by reason of the using of such trade; in like manner as any mariner or soldier may do by the statute of the 22 G. 2. c. 44. 2 G. 3. c. 20. *f.* 79.

In what case he shall be intitled to his cloaths.

9. No private militia man shall be intitled to his cloaths to his own use, till he hath served three years, if unembodied; if embodied, to be applied, at the end of one year, as the commanding officer shall judge best for the use of such militia man. 2 G. 3. c. 20. s. 80.

XVII. General power of enforcing the execution hereof.

Besides the particular penalties for particular offences, as above specified; there are several general directions for enforcing the execution of these acts, which are as followeth:

Constables and other officers to attend.

1. All chief constables, petty constables, tithingmen, headboroughs, and other officers of hundreds, rapes, laths, wapentakes, parishes, tithings and places, shall be aiding and assisting to his majesty's lieutenants, and their deputy lieutenants, and justices, and to all to whom any power is by this act given, in the execution hereof. 2 G. 3. c. 20. s. 115.

General penalty on their neglect or disobedience.

2. And it shall be lawful for the deputy lieutenants and justices within their subdivisions, from time to time, to issue out their order or warrant under their hands and seals, commanding the attendance of the constable, tithingman, headborough, or other officer of any parish, tithing or place within their subdivisions, at such times and places as in such order or warrant shall be expressed; and if they shall refuse or neglect to appear, they shall suffer as followeth:

That is to say, If any such officer shall refuse or neglect to comply with such orders and directions as he shall from time to time receive, from his majesty's lieutenant, deputy lieutenants, and justices as aforesaid; in such case, three deputy lieutenants, or two deputy lieutenants together with one justice, or one deputy lieutenant together with two justices, shall imprison him in the common gaol, there to be kept without bail or mainprize for the space of one month; or fine him not exceeding 5 l. nor under 40 s. by distress; rendering the overplus on demand, after deducting the charge of distress and sale. 2 G. 3. c. 20. s. 71.

Power to administer an oath.

3. And in all cases, where the lieutenant, deputy lieutenants, or justices are by this act required to examine, hear and determine; all witnesses shall be examined upon oath; which oath, such lieutenant, deputy lieutenants,

nants, and justices, or any one of them, are empowered to administer. *f.* 130.

4. All fines, penalties and forfeitures by this act imposed, the manner of recovery whereof is not in this act particularly provided for, shall on proof upon oath before one justice, be levied by distress by warrant of such justice; and where the goods of such offender shall not be sufficient to answer the distress, such justice shall commit him to the common gaol, for any time not exceeding three months: And all fines, penalties, and forfeitures by this act imposed, the application whereof is not otherwise particularly provided for, shall be paid to the clerk of the regiment or battalion, and be made a common stock; and the said clerk shall give a particular account thereof, as it shall arise, to the colonel or commanding officer; who shall cause butts to be erected in some convenient place, and shall direct the clerk of the regiment or battalion to buy and provide with some part of the money so arising a proper quantity of gunpowder and ball, to be used at proper times by the militia men in shooting at marks; and to dispose of such other part thereof as he shall think reasonable, in some prizes to be given to such militia men, as shall by the commanding officer then present be adjudged to the best marksmen; and to apply the residue thereof to other contingencies, relating to the regiment or battalion. *f.* 128.

General levying
and application
of the forfei-
tures.

5. In all cases, when any person shall be committed to the house of correction by virtue of this act; he shall, during the time of such commitment be kept to hard labour. *f.* 129.

Commitment to
the house of cor-
rection.

6. No order or conviction made by any of his majesty's lieutenants, or by three deputy lieutenants, or by two deputy lieutenants together with one justice, or by one deputy lieutenant together with two justices, or by any justice or justices, by virtue of this act, shall be removed by certiorari, nor execution or other proceedings upon such order be superseded thereby. *f.* 131.

Certiorari.

7. If any suit be commenced against any person, for any thing done in pursuance of this act; the action shall be laid in the proper county, within six months, and not afterwards; and the defendant may plead the general issue, and if he recovers shall have treble costs. *f.* 147.

Treble costs.

*XVIII. Punishment of serjeants, drummers, and fifers:
for disobedience or desertion.*

Punishment for
disobedience.

1. By the 4 G. 3. c. 17. If any *drummer*, during the time the militia shall not be called out, shall be negligent in his duty, or disobedient to the orders of the adjutant or other his superior officer, and thereof be convicted on the oath of the adjutant or other his superior officer or other credible witness, before one justice of the county in the militia of which such drummer serves: he shall forfeit any sum not exceeding 40 s. and if not paid immediately, the captain or commanding officer of the company to which such drummer belongs shall stop his pay, until the same shall amount to the sum ascertained by the justice; and the said captain or commanding officer shall pay the same to the clerk of the regiment or battalion, to be applied as part of the common stock.
s. 8.

And by the 7 G. 3. c. 17. If any *serjeant major, serjeant, drum major, drummer, or fifer*, engaged to serve in the militia, and who shall have received any pay therein, shall, during the time such militia is not in actual service or out at annual exercise, misbehave, be negligent in his duty, or disobedient to the orders of the adjutant or other his superior officer, and be thereof convicted on the oath of the adjutant or other his superior officer, or other credible witness, before one justice of the county or place to the militia whereof such offender shall belong; he shall, over and above any penalty or punishment by any former law, be committed to the common gaol of the county or place wherein he shall be engaged to serve in the militia, for any time not exceeding six months.
s. 19.

For desertion.

2. If any *serjeant major, serjeant, drum major, drummer, or fifer*, during the time the militia is not in actual service or out at annual exercise, shall desert from the regiment, battalion, or independent company, in which he shall be inrolled to serve; it shall be lawful for the constable of the town or place where any person may be reasonably suspected to be such a deserter, and shall be found, to apprehend or cause him to be apprehended and brought before a justice in or near such place; who shall examine him: And if by his confession, or oath of one witness, or the knowledge of such justice, he shall appear to be a deserter; the justice shall forthwith cause him

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him to be conveyed to the gaol of the county or place where he shall be found, or to the house of correction or other publick prison of the town or place where he shall be apprehended; and transmit an account thereof to the secretary at war. And the keeper of such house or prison shall receive the subsistence of such deserter, during the time that he shall continue in his custody; but shall not be intitled to any fee or reward on account of his imprisonment. 7 G. 3. c. 17. s. 20.

And the secretary at war, on receiving such account, if the deserter shall be taken out of the county to the militia whereof he shall belong, shall issue an order under his hand and seal, to the keeper of the prison where such deserter shall be confined, requiring him to deliver such deserter to the person therein named; and such person shall thereupon convey the said deserter, in such manner and by such means as the secretary at war shall direct, before a justice of the county to the militia whereof such deserter shall belong; who shall forthwith cause him to be conveyed to the gaol, house of correction, or other publick prison, within the said county. s. 21.

And the said deserter shall be kept in such prison, till the regiment, battalion, or independent company to which he belongs, shall be called out to annual exercise, or embodied and called forth into actual service, which shall first happen; and the then commanding officer shall issue out an order under his hand and seal, to the keeper of the prison where such deserter shall be confined, requesting him to deliver the deserter to the person or persons therein named; and the said officer shall summon and hold a court martial, and try such deserter, and if found guilty punish him, agreeable to the powers and provisions of the articles of war and the act against mutiny and desertion. s. 22.

And if any of the said persons shall desert during the time of actual service, or at annual exercise, and shall not be apprehended during such time; he may be apprehended and proceeded against in the same manner as is above directed in the case of deserting when the militia are not in actual service or out at annual exercise. s. 23.

And the justice before whom such deserter shall be committed [*convicted*, seems to have been the word intended, that is, the justice before whom the deserter was first brought] shall issue his warrant to the clerk of the regiment, battalion, or independent company, requiring him to pay out of the stock belonging to such regiment, battalion

battalion or independent company, to the person who shall have apprehended such deserter, the sum of 20 s. *f. 24.*

And if any person shall knowingly harbour, conceal, or assist such deserter; he shall forfeit 5 l. to be levied as any penalties or forfeitures by the 2 G. 3. c. 20.

[Note, It seemeth that there may be a difficulty in this case, in ascertaining what shall be deemed a *desertion*, especially from a regiment, battalion, or independent company not then on foot; or how far such person may go about his other lawful affairs, either within, or out of the precise limits of the jurisdiction for which he serves, without being liable to be apprehended as a deserter.]

XIX. Exceptions with respect to particular places and persons.

The city of London.

1. His majesty's lieutenants commissioned for the militia of the city of *London*, shall continue to list and levy the trained bands and auxiliaries of the said city in manner as heretofore. 2 G. 3. c. 20. *f. 140.*

The tower hamlets.

2. It shall be lawful for the constable of the tower, or lieutenant of the tower hamlets, for the time being, from time to time to appoint his deputy lieutenants, and to give commissions to a proper number of officers to train and discipline the militia to be raised within and for the said division, pursuant to the statute of the 13 & 14 C. 2. and to form the same into two regiments of eight companies each, in such manner as the said constable or lieutenant hath used to do: and also, for defraying the necessary charge of trophies and other incident expences of the militia of the same division, it shall be lawful for his majesty's said constable or lieutenant, to continue to raise in every year the proportion of a fourth part of one month's assessment of trophy money, within the said division or hamlets, in such manner as he hath used to do by the said act of the 13 & 14 C. 2. *id. f. 141.*

And his majesty's said constable of the tower, or lieutenant of the tower hamlets, shall appoint a treasurer of the said trophy money, for receiving and paying such monies as shall be levied by the said act of C. 2. who shall yearly account in writing and upon oath for the same to the said lieutenant or his deputy lieutenants or any three of them; which accounts shall be certified to the justices for the said division at their next sessions. And the said constable

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constable or lieutenant shall not issue out warrants for raising any trophy money, until the justices at such sessions shall have examined, stated and allowed the accounts of the trophy money raised for the preceding year, and certify the same under the hands and seals of four of such justices; unless where it shall appear to such justices, that by reason of the death of such treasurer or otherwise, such accounts cannot be passed. *f. 142.*

3. Nothing in this act shall extend to the tanners in *Devon and Cornwall*; but the lord warden of the tanneries for the time being, in pursuance of his majesty's commission in that behalf, and such as he shall commissionate and authorize under him, shall use the like powers, and array, assess, arm, muster and exercise the said tanners, as hath been heretofore used, and according to the ancient privileges and customs of the tanneries. *f. 139.*

The tanneries.

4. The lord warden of the cinque ports, two ancient towns, and their members, and in his absence his lieutenant or lieutenants, shall put in execution within the same all the powers and authorities granted by any former act or acts, in like manner as his majesty's lieutenants of counties and their deputy lieutenants may do; and may keep up and continue the usual number of soldiers in the said ports, towns and members, unless he or they find cause to lessen the same: and the militia of the said ports, towns and members, shall remain separate from the militia of the several counties within which the said ports, towns and members are situate. *f. 143.*

The cinque ports.

5. After the number of persons, which the *Isle of Wight* is to furnish to the militia of the county of *Southampton*, shall have been appointed, by his majesty's lieutenant and the deputy lieutenants, or by the deputy lieutenants of the said county at large; the governor of the said island shall appoint the officers of the militia there, as his majesty's lieutenants of counties may do; and shall appoint five or more deputies to act with him; which deputies and officers shall be qualified and act as is prescribed with respect to like officers in *Wales*. And the militia of the said island shall be raised in the same manner as the militia of the county of *Southampton*, and shall be deemed a part of the militia of the said county. And after the same shall be so raised, the governor, lieutenant governor and deputies shall order and direct the training and exercising the militia within the said island, in the same manner as the lieutenants and deputy lieutenants may do elsewhere. *f. 127.*

Isle of Wight.

Berwick upon
Tweed.

6. All provisions made for the county of *Northumberland* and the militia thereof, shall be in force with respect to the town of *Berwick upon Tweed*, except only as to the particulars here expressed and otherwise provided for; and out of the persons returned in the lists for the said town a number of private militia men shall be chosen by lot to serve for the said town, in the same proportion with the private militia men appointed to serve for the other respective hundreds, wards, and other divisions within the said county of *Northumberland*: and if persons can be found within the said town and liberties thereof, with such qualifications as are required for deputy lieutenants and officers within cities and towns which are counties of themselves; the chief magistrate of the said town of *Berwick* shall appoint five deputy lieutenants, and such number of officers of the militia as shall be proportionable to the number of militia men which the said town shall raise, as their quota towards the militia of the county of *Northumberland*. And the said militia shall annually join the militia of the county of *Northumberland*, and be exercised together, and shall then, and also in time of actual service, be deemed the militia of the county of *Northumberland* for the purposes aforesaid. *f. 126.*

Parish in different
counties.

7. Where any parish shall lie in more counties or ridings than one; the inhabitants of such parish shall serve in the militia of that county or riding, wherein the church belonging to such parish is situated. *f. 132.*

Quakers.

8. If a quaker shall be chosen by lot to serve in the militia, and shall refuse or neglect to appear and to take the oath in that behalf provided, and to serve in the said militia, or to provide a substitute to be approved as aforesaid; three deputy lieutenants, or two deputy lieutenants together with one justice, or one deputy lieutenant together with two justices, shall, if they think proper, upon as reasonable terms as may be, provide and hire a fit person, who shall take the said oath, and subscribe his consent to serve in the said militia for the space of three years, as the substitute of such quaker; and shall levy (G) by distress and sale of the goods and chattels of such quaker, such sum or sums as shall be necessary to defray the expence of providing and hiring such person to serve in the said militia for the space of three years, as the substitute of such quaker, rendering the overplus, after deducting the charges of distress and sale. And if any measures shall be used in making distress, which may by such quaker be thought oppressive; he may complain thereof to the deputy lieutenants and

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and justices at their next meeting, who shall hear and finally determine the same. *f.* 87.

And in every place where any rate as is aforesaid shall be made, where the churchwardens or overseers shall complain to a justice, that a quaker or quakers refuse to pay his or their assessment; such justice may order such costs and charges for levying the distress, as he shall think reasonable not exceeding 10 s. on each of the said quakers, where there are no more than two of them, and where there are a greater number, not exceeding 5 s. on each. *f.* 88.

9. The inhabitants of the constabulary of *Craike*, a parcel of the county of *Durham* surrounded by the North Riding of the county of *York*, shall serve in the militia of the said North Riding. *f.* 133. Craike.

10. The inhabitants of that part of the parish of *Maker* that lies in the county of *Cornwall*, shall serve in the militia of the said county. *f.* 134. Maker.

11. The inhabitants of the town and parish of *Wokingham*, shall serve in and be trained and exercised with the militia of the county of *Berks*. *f.* 135. Wokingham.

12. The inhabitants of the township of *Filey*, shall serve in the militia of the East Riding of the county of *York*. *f.* 136. Filey.

13. The inhabitants of *Threapwood*, shall serve in the militia of the county of *Flint*, and be trained and exercised with the militia of the parish of *Wrothenbury*. *f.* 137. Threapwood.

14. The inhabitants of the parish of *St. Martin*, called *Stamford Baron*, in the suburbs of the borough and town of *Stamford*, on the south side of the waters there, called *Welland*, shall serve in the militia of the county of *Lincoln*. *f.* 38. Stamford Baron.

A. Form of a precept to the high constable for ordering lists to be returned; with the petty constable's warrant thereupon.

Westmorland. { To H. C. gentleman, chief constable
of the East Ward within the said
county.

WE A. D. and B. D. esquires, deputy lieutenants,
and J. P. and K. P. esquires, two of his majesty's
justices of the peace for the said county, at our general meet-
ing for that purpose assembled, do hereby require you to issue
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out your warrants to the several petty constables within your said ward, according to the form hereon indorsed. Given under our hands and seals the ——— day of ——— in the year ———

Form of the said warrant indorsed.

Westmorland, { To the constable of ———
East ward. }

BY virtue of an order from the deputy lieutenants [and justices of the peace] in and for the said county at their general meeting for that purpose assembled, unto me directed, you are hereby required to make out a fair and true list in writing of all men usually and at this time dwelling within your constablewick, between the ages of eighteen and forty-five years, distinguishing therein their ranks and occupations, and which of the said persons labour under any infirmities incapacitating them from serving as militia men; and also which of them (if any) is a peer of this realm, or a person serving as a commission officer in any regiment, troop or company in his majesty's other forces, or in any of his majesty's castles or forts, or a non-commission officer or private man serving in any of his majesty's other forces, or a commission officer serving or who has served for four years in the militia, or a member of either of the universities, clergyman, licenced teacher of any separate congregation, constable, or other peace officer, articulated clerk, apprentice, seaman or seafaring man, or poor man who has three children born in wedlock. Which list so fairly and truly made as aforesaid, you are hereby required to return to the deputy lieutenants and justices of the peace for the said county at their meeting for that purpose to be held on the ——— day of ——— next ensuing the date hereof, at the mair-hall in Appleby in the said county. And you are hereby further required to affix a true copy of the said list so to be made out as aforesaid, on the door of the church or chapel belonging to your respective parish, township or place; and if such place being extraparoichial, hath no church or chapel belonging thereto, then on the door of the church or chapel of some parish or place there-to adjoining, on some Sunday morning which shall be three days at the least before the said ——— day of ———. And also you are to affix notice in writing at the bottom of the said list, of the day and place of the said meeting, and that all persons who shall think themselves aggrieved may then appeal, and that no appeal will be afterwards received. Herein fail you not.

Given

(New) Militia.

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Given under my hand, the ——— day of ——— in the
year of our lord ———.

H. C. chief constable of
the said ward.

B. Precept to the high constable for issuing his
warrants to the petty constables, to give notice
of the number appointed to serve within each
parish or place, and of the time and place for bal-
lotting.

Westmorland. { To H. C. gentleman, chief constable
of the West Ward within the said
county.

WE A. D. and B. D. esquires, deputy lieutenants,
and J. P. and K. P. esquires, justices of the peace in
and for the said county, at our subdivision meeting assem-
bled, for proportioning the number of private militia men to
serve for each parish, tithing or place within the said ward,
do hereby require you to give notice to the several petty con-
stables within your said ward, of the number of men appointed
by us to serve for the several parishes, tithings, or places within
their respective districts, according to the list hereunto an-
nexed; and that their next subdivision meeting, for causing
the said men to be chosen by lot to serve in the said militia
will be at ——— in ——— in the said county, on the ———
day of ——— now next ensuing. Given under our hands
and seals the ——— day of ——— in the year ———.

Note; it may be proper in this case (tho' not required
by the act), and more especially in case of occasional dis-
charges, to require the petty constables to give notice to
the several persons within their respective districts, liable to
be ballotted, that they may appear, if they think fit, and
shew cause why such discharges should not be made, or
such ballotting should not be; for they may offer volun-
teers; or the cause assigned for such discharge may not be
true, and it is reasonable they should have opportunity to
disprove it: And consequently, the high constable's war-
rant to the petty constables may vary accordingly.

C. Precept

2. Precept to the high constable, for issuing his warrants to the petty constables, to give notice to the persons chosen by lot, to appear and take the oath and be inrolled; with the petty constable's warrant thereupon.

Westmorland. { To H. C. gentleman, chief constable
of the West Ward, within the said
county.

WE A. D. and B. D. esquires, deputy lieutenants, and J. P. and K. P. esquires, two of his majesty's justices of the peace, in and for the said county, at our subdivision meeting for that purpose assembled, do hereby order and require you forthwith to issue out your warrants to the several petty constables within your said ward, according to the form hereon indorsed. Given under our hands and seals the ——— day of ——— in the year of our lord ———.

Form of the said warrant indorsed.

Westmorland, { To the constable of ———
West ward.

BY virtue of an order from the deputy lieutenants and justices of the peace in and for the said county, at their subdivision meeting for that purpose assembled, you are hereby directed and required to give notice to A. M. an inhabitant within your constablewick, chosen by lot at the said meeting to serve in the militia of the said county, that he do appear at the moot-hall in Appleby in the said county, on ——— the ——— day of ——— next, then and there to take the oath in that behalf required by law, and to be inrolled to serve in the militia of the said county as a private militia man for the space of three years, or otherwise to provide a fit person (to be approved by the deputy lieutenants and justices of the peace that shall be then and there present) to serve as his substitute, who shall take the said oath and be inrolled in manner aforesaid. Which notice you are to give unto him, or to leave the same at his place of abode, at least seven days before the said ——— day of ——— next. And be you then there to certify what you shall have done in the premises. Herein sail
you

(New) Militia.

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you not. Given under my hand the ——— day of ——— in
the year of our lord ———.

H. C. chief constable of
the said ward.

Form of the notice to be left at the dwelling house,
where personal notice cannot be given.

William Harrison,

NOTICE is hereby given unto you, that you are
chosen by lot to serve in the militia of this county of
W. and that you are to appear at the moot-hall in A. in the
said county, on ——— the ——— day of ——— next,
before the deputy lieutenants and justices of the peace for the
said county to be then and there assembled, to take the oath in
that behalf required, and to be inrolled to serve in the militia
of the said county as a private militia man for the space of
three years, or otherwise to provide a fit person to be then and
there approved by the said deputy lieutenants and justices, who
shall take the said oath, and be then and there inrolled as afore-
said. Given under my hand the ——— day of ——— in
the year of our lord ———.

A. C. constable
of ———.

To prevent mistakes, it may be best to have printed
forms, and to deliver the same properly filled up to the
respective constables.

D. Form of a warrant against a militia man not
appearing to be sworn and inrolled.

Westmorland. { To the constable of ———

WHEREAS complaint and information upon oath hath
been made unto me J. P. esquire, one of his majesty's
justices of the peace in and for the said county, that A. O.
late of ——— in the county aforesaid, yeoman, (not being
one of the people called quakers) hath been duly chosen by lot to
serve as a private militia man in the militia of the said
county,

county, and hath had due notice to appear before the deputy lieutenants and justices of the peace in and for the said county, at their subdivision meeting for that purpose assembled, to take the oath in that behalf required, and to be inrolled to serve in the said militia as a private militia man, or to provide a fit person to be approved by the said deputy lieutenants and justices as aforesaid to serve as his substitute; and that he the said A. O. hath neglected [or, refused] to take the said oath, and to serve in the said militia, and hath also neglected to provide any fit person to serve as his substitute: These are therefore to require you forthwith to summon the said A. O. to appear before me at the house of ——— in ——— in the said county, on ——— the ——— day of ——— at the hour of ——— in the afternoon of the same day, to answer unto the said complaint, and to shew cause why the penalty of ten pounds should not be levied upon his goods and chattels for the said offence. Herein fail you not. Given under my hand and seal the ——— day of ——— in the year of our lord ———.

E. Warrant of distress for the penalty of 10l.

Westmorland. { To the constable of ———

WHEREAS A. O. late of ——— in the county of ———, yeoman, (not being one of the people called quakers,) is this day duly convicted upon oath before me J. P. esquire, one of his majesty's justices of the peace in and for the said county, for that he the said A. O. having been duly chosen by lot to serve as a private militia man in the militia of the said county, and after due notice given unto him to appear before the deputy lieutenants and justices of the peace in and for the said county at their subdivision meeting for that purpose assembled, to take the oath in that behalf required, and to be inrolled to serve in the said militia as a private militia man, or to provide a fit person to be approved by the said deputy lieutenants, and justices as aforesaid, to serve as his substitute, hath neglected to take the said oath, and to serve in the said militia, and also hath neglected to provide any fit person to serve as his substitute; whereby he the said A. O. hath forfeited the sum of ten pounds: These are therefore in his said majesty's name to command you, to levy the said sum by distress of the goods and chattels of him the said A. O. And if within the space of [four] days next after such distress by you taken, the said sum together with reasonable charges

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charges of taking and keeping the said distress shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do pay the said sum of ten pounds to the said deputy lieutenants and justices as aforesaid, or to such person as they shall appoint to receive the same, for the providing of a substitute to serve for him the said A. O. and for the other purposes by law directed for the application thereof; rendering the overplus (if any shall be) on demand unto him the said A. O. the reasonable charges of taking, keeping and selling the said distress being first deducted. And if sufficient distress cannot be found of the goods and chattels of him the said A. O. whereon to levy the said sum of ten pounds, that then you certify the same to me together with the return of this precept. Herein fail you not. Given under my hand and seal, the
 — day of — in the year of our lord —.

Constable's return of the want of distress.

Westmorland.

A. C. constable of — in the said county, maketh oath, before me J. P. esquire, one of his majesty's justices of the peace for the said county, the — day of — in the year — that by virtue of my warrant to him directed, to levy the sum of — by distress and sale of the goods and chattels of A. O. late of — aforesaid, in the county aforesaid, he the said constable hath made diligent search for such goods and chattels; and that he doth not know, nor can find, that he the said A. O. hath goods and chattels sufficient to answer the said distress.

Before me

A. C.

J. P.

F. Commitment for want of distress.

Westmorland. { To the constable of — in the said county, and to the keeper of the common gaol at A. in the said county.

WHEREAS A. O. late of — in the county aforesaid, yeoman, (not being one of the people called quakers,) was on the — day of — duly convicted before me J. P. esquire, one of his majesty's justices of the peace in and for the said county, for that he the said A. O. having
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been duly chosen by lot to serve as a private militia man in the militia of the said county, and after due notice given unto him to appear before the deputy lieutenants and justices of the peace in and for the said county at their subdivision meeting for that purpose assembled, to take the oath in that behalf required and to be inrolled to serve in the said militia as a private militia man, or to provide a fit person to be approved by the said deputy lieutenants and justices as aforesaid to serve as his substitute, did neglect to take the said oath, and to serve in the said militia, and also did neglect to provide any fit person to serve as his substitute, and thereupon did forfeit the sum of ten pounds: And whereas on the said—day of—in the year aforesaid, I did issue my warrant to the constable of—to levy the said sum of ten pounds, by distress and sale of the goods and chattels of him the said A. O. And whereas it duly appears to me, as well on the oath of the said constable, as otherwise, that he the said constable hath used his best endeavours to levy the said sum on the goods and chattels of the said A. O. as aforesaid, and that the goods and chattels of him the said A. O. are not sufficient to answer the said distress: These are therefore to command you the said constable of—aforesaid, to apprehend the body of the said A. O. and him safely to convey to the common gaol at A. aforesaid in the county aforesaid, and there deliver him to the said keeper thereof, together with this precept. And I do hereby command you the said keeper of the said common gaol, to receive into your custody in the same common gaol the said A. O. and him there safely to keep for the space of [three months]: And for so doing, this shall be your sufficient warrant. Given under my hand and seal, the—day of—in the year of our lord—.

G. Warrant of distress for quakers substitutes.

Westmorland. { A. D. esquire, deputy lieutenant, and
J. P. and K. P. esquires, two of his
majesty's justices of the peace for the
said county; to the high constable of
Kendal ward within the said county,
and to the petty constables of—in
the said county, and to each and
every of them.

FORASMUCH as A. Q. late of—aforesaid in the county aforesaid, yeoman, being one of the people called quakers, hath been duly chosen by lot to serve in the militia of

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of the said county, and after due notice given unto him hath neglected to appear and to take the oath in that behalf required, and to serve in the said militia, and hath also neglected to provide any fit person to serve for him as his substitute; and whereas we the said deputy lieutenant and justices as aforesaid have, upon as reasonable terms as might be, namely for the sum of—provided and hired A. S. a fit person to serve in the said militia, as the substitute of him the said A. Q. We do therefore hereby require you to levy the said sum of—by distress and sale of the goods and chattels of him the said A. Q. and to pay the same unto—for the use of him the said A. S. rendring the overplus (if any shall be) unto him the said A. Q. after deducting the charges of the said distress and sale. Herein fail you not Given under our hands and seals, the—day of—in the year of our lord—.

Miller.

BY an ancient ordinance, *Hawk. Stat. V. r. p. 181.* The toll of a mill shall be taken according to the custom of the land, and according to the strength of the water-course, either to the twentieth or four and twentieth corn.

And yet in some places the millers do claim and take the sixteenth part; and where the custom hath been so used time out of mind, perhaps it may be good and warrantable. *Dalt. c. 112.*

And Mr. Dalton says, the miller ought to take but one quart for grinding of one bushel of hard corn, but if he fetch and carry back the grist to the owner, he may take two quarts of hard corn; and this hard corn is intended of wheat, rye, meslin (which is wheat and rye mixed). And for malt, the miller shall take but half so much toll as he taketh for hard corn, that is, one pint in the bushel, for that malt is more easily ground than wheat or rye: But if the miller do fetch to his mill, and carry back the malt to the owner's house, then the miller also shall have double toll. *Dalt. c. 112.*

But, by *Holt Ch. J.* the toll of a mill must be regulated by custom; and if the miller takes more than the custom warrants, it is extortion: But if it is a new mill, there the miller is not restrained to any certain toll; but the per-

sons who will have their corn ground there, must comply with the miller's demands; and whatsoever he takes, it is not extortion, because it is the voluntary agreement of the parties. *L. Raym.* 149.

In some places, the tenants are bound to have their corn ground at the lord's mill. As in the case of *Hix and Gardener, H. 11* §. In an action on the case for erecting a mill, the lord declared upon a custom for all the inhabitants to grind at his mill, and that the defendant had built a mill there contrary to the custom; and this was adjudged a good custom: And suit to a mill may be by reason of tenure or service, and also by custom, and so may well bind strangers. *2 Bulst.* 195.

And a new erected house within the precincts is within the custom of multure; and none may grind elsewhere, but in case of excessive toll, or that the grist cannot be ground in convenient time. *Hardr.* 177.

T. 16 G. 2. K. and Wood. The defendant being a miller, was indicted for *changing* corn delivered to him to be ground, and giving bad corn instead of it. It was moved to quash it, because only a private cheat, and not of a publick nature. But it was answered, that being a cheat in the way of trade, it concerned the publick, and therefore was indictable. And the court was unanimous not to quash it. *Seff. Cas. V. 1.* 217.

Altho' every larceny implies a trespass, and a felonious *taking* of the thing stolen; yet it hath been resolved, that even those who have the possession of goods by the delivery of the party, as a miller who hath corn delivered to him to grind may be guilty of felony by taking away part thereof with an intent to steal it. *1 Haw.* 90.

Millers are not to be common buyers of any corn, to sell the same again, either in corn or meal; but ought only to serve for the grinding of corn that shall be brought to their mills. *Dalt. c.* 122.

Misadventure. See Homicide.

Mills destroying.

IF any person or persons, unlawfully, riotously and tumultuously assembled, to the disturbance of the public peace, shall unlawfully and with force demolish or pull down, or begin to demolish or pull down, any wind saw mill,

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Mills destroying.

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mill, or other wind mill, or any water mill, or other mill, or any of the works thereto belonging; every such person shall be guilty of felony without benefit of clergy.

And if any person shall wilfully or maliciously burn or set fire to any such mill; he shall in like manner be guilty of felony without benefit of clergy.

Prosecution to be commenced within 18 months after the offence committed. 9 G. 3. c. 29.

Mines destroying.

IF any person shall wilfully or maliciously set fire to, burn, demolish, pull down, or otherwise destroy or damage, any fire engine or other engine erected for draining water from any mine of lead, tin, copper, or other mineral; or any bridge or waggon way erected for conveying lead, tin, copper, or other mineral from any such mine; or shall cause or procure the same to be done; he shall be guilty of felony, and transported for 7 years.

Provided, that no person shall be prosecuted on this act, unless the prosecution be commenced in 18 months after the offence committed. 9 G. 3. c. 29.

The penalties of destroying *Coal mines* are inserted under that title.

Misdemeanors.

THIS word in its usual acceptance is applied to all those crimes and offences, for which the law has not provided a particular name; and they may be punished according to the degrees of the offence, by fine, or imprisonment, or both. *Barl.*

Misprision of felony. See *Felony*.

Misprision of treason. See *Treason*.

Mittimus. See *Commitment*.

Murder. See *Homicide*.

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Mur.

Mute.

THE whole learning relating to this title will be comprehended in the explication of the statute of *Westminster* 1. c. 12. which is as follows :

Notorious felons, and which openly be of evil name, and will not put themselves in inquest of felonies that men shall charge them with before the justices at the king's suit, shall have strong and hard imprisonment, as they which refuse to stand to the common law of the land. But this is not to be understood of such prisoners as be taken of light suspicion. 3 Ed. 1. c. 12.

Felons] This statute extendeth not to treason, which is the highest offence ; not to petit larceny, which is of all felonies the lowest : But if a man stand obstinately mute upon an arraignment of treason or petit larceny, he shall have the like judgment as if he had confessed the indictment. 2 *Inst.* 177. 2 *Haw.* 329.

This statute *felons* extendeth as well to women, as to men. 2 *Inst.* 177.

Notorious, and openly of evil fame] Therefore no person shall be put to this punishment, unless the matter be evident or proveable, which it is the duty of the judge to look unto, and to examine the evidence which proves the prisoner guilty of the fact, before he proceed to the judgment of *pain fort & dure*. 2 *Inst.* 177. 2 *Haw.* 330.

And will not put themselves in inquest] This is called standing mute. Now a man may stand mute two manner of ways :

First, when he stands mute *without speaking of any thing* ; and then the court shall *ex officio* inquire by the oath of any 12 persons that happen to be present, whether he do so of malice, or by the act of God ; and if it be found that it was by the act of God, then the judges of the court (who are always to be of council with the prisoner to give him law and justice) ought to inquire touching all those points which he might possibly plead for himself, as whether a felony were done, whether he be the same person that is indicted for it, whether he did it, and whether he hath any matter to alledge for his discharge ; and such inquiry shall be made, not by an inquest of office, but by a jury returned by the sheriff, in the same manner as if the

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the defendant had actually pleaded ; for since it is not his own fault that he did not so plead, there is no reason why his trial should be in a more loose and summary manner, or any way less regular or solemn, than if he had so pleaded. 2 Inst. 178. 2 Haw. 327, 328. 2 H. H. 317.

But what if all this be found against the prisoner, what shall be done?—Whether judgment of death shall be given against him, though he never pleaded, seems yet undetermined. 2 H. H. 317.

But after a man hath confessed himself guilty, or pleaded and put himself upon his country, he shall not afterwards be demeaned as one that stands mute, in respect of his subsequent silence ; but the jury shall be charged, and the trial shall proceed, and the like judgment shall be given as in common cases. 2 Haw. 327.

Also if the person become mute, and not by the act of God, as by cutting out his own tongue, he shall forthwith be put to his penance. 2 Inst. 178.

Another kind of mute is, when the prisoner can speak, and perhaps pleadeth not guilty, or pleadeth a plea in law, and will not conclude to the inquest according to this act, that is, to be tried by God and the country ; then this act is sufficient warrant, if the cause be evident or probable, to put him to his penance : But if he demur in law, and it be adjudged against him, he shall have judgment to be hanged ; and tho' by his demurrer he refuse to put himself upon the inquest according to the letter of this act, yet so far as he is out of the reason of this act, for that he refuseth not the trial of the common law, the demurrer being allowed to him by law, and to be tried by the judges, he shall not be put to his penance, but have judgment to be hanged, and not have *pain fort & dure*. 2 Inst. 178.

At the king's suit] This act speaketh only of indictments at the suit of the king ; but the judgment of *pain fort & dure* was at the common law, both in indictments and appeals. 2 Inst. 177.

Shall have strong and hard imprisonment] *Soient mises en la prison fort & dure* : The judgment in this case is, that the man or woman shall be remanded to the prison, and laid there in some low and dark room, where they shall lie naked on the bare earth without any litter, rushes, or other cloathing, and without any garment about them, but something to cover their privy parts, and that they shall

shall lie upon their backs, their heads uncovered and their feet, and one arm shall be drawn to one quarter of the room with a cord, and the other arm to another quarter, and in the same manner shall be done with their legs, and there shall be laid upon their bodies iron and stone, so much as they may bear and more, and the next day following they shall have three morsels of barley bread without any drink, and the second day they shall drink thrice of the water that is next to the house of the prison (except running water) without any bread, and this shall be their diet until they be dead. So as upon the matter they shall die three manner of ways, by weight, by famine, and by cold. And the reason of this terrible judgment is, because they refuse to stand to the common law of the land. 2 Inst. 178, 179.

Which punishment being so severe, lord Hale advises, that it be not given too hastily, but that the prisoner be not only thrice admonished, but also have some convenient respite, as until the afternoon, to bethink himself, if the arraignment be in the morning; or till the next morning, if the arraignment be in the afternoon; and that the judgment itself be distinctly read to him, that he may know his danger before his final refusal, with due admonition not to destroy himself. 2 H. H. 320.

And tho' judgment be given of *pain fort & dure*, yet if the offence laid in the indictment be within clergy, his clergy shall be allowed him; and tho' in strictness of law the prisoner ought to pray it, yet it is the duty of the judge to allow it, tho' not prayed, and that as well after judgment pronounced as before. 2 H. H. 320, 321.

And as to the case how far he is intitled to his clergy, it is enacted by the 3 W. c. 9. that if any person be indicted of any offence, for which by virtue of that or any former statute he is excluded from the benefit of clergy, if he had been convicted by verdict or confession; if he stand mute; or will not answer directly to the felony, or shall challenge peremptorily above 20 of the jury, he shall not be admitted to the benefit of clergy. s. 2.

In which expression [by virtue of any former statute] offences excluded from the benefit of clergy by subsequent statutes seem not to be comprehended; and consequently persons standing mute on an indictment upon any such subsequent statute, shall have their clergy, if it is not otherwise specially provided by such statute. 2 Hawk. 332.

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And as to the other consequences of standing mute, it is observable, that where a person standing mute is adjudged to his penance, and thereby prevents that attainder which otherwise he might have incurred, he *forfeits his chattels only*, and not his *lands*; and for this reason some have endured this punishment. 2 *Haw.* 331.

It doth not appear that the prosecutor of an indictment for felony, where the defendant standeth mute, is intitled to the restitution of his goods, either by the common law or by any statute. 2 *Haw.* 332.

But this is not to be understood of such prisoners as shall be taken on light suspicion] But if they obstinately stand mute, it seemeth that they may be severely fined and imprisoned for the contempt. 2 *Haw.* 330.

Naval stores. See *Stores*.

Navigable rivers. See *Rivers and Navigation*.

Nets. See *Game*.

News papers. See *Stamps*.

Night walkers. See *Surety*.

Noblemen. See *Peers*.

Non compos. See *Lunatick*.

Non conformists. See *Dissenters*.

Northern borders.

1. **B**Y the 43 *El. c. 13.* Forasmuch as many persons dwelling in *Cumberland, Northumberland, Westmorland, and Duresme*, have been taken by force and kept until ransomed; and whereas by reason of incursions, burnings, and robberies, several inhabitants there have been forced to pay a certain rate of money, corn, cattle, or other consideration, commonly called by the name of *Blackmail*, to divers men of name, friended and allied

Northern borders

allied with divers in those parts, who are known to be great robbers and spoil takers in the said counties, to the end thereby to be by them freed, protected, and kept in safety; by reason whereof many are impoverished, and rapine much increased: It is therefore enacted, that whosoever shall without good authority take or detain any such persons against their wills, to ransom them, or make a prey or spoil of their persons or goods, upon deadly feud, or otherwise; or shall be aiding therein; or whosoever shall take, receive, or carry any money, corn, cattle, or other consideration, commonly called Blackmail, for such protection; or shall burn any stack of corn: He shall, on conviction at the assizes or sessions, be guilty of felony without benefit of clergy.
s. 1, 2.

Forasmuch as, &c.] At the time when this act was made, and for some time after, the peace of the borders was maintained by commissioners appointed by the two crowns respectively, who agreed upon certain articles to be observed by both sides; appointed guards and watches at certain fords and other places; kept courts; redressed grievances; punished offenders; and had power of life and death by way of legal trial in the manner of oyer and terminer. And this act was not made in abolition of such power, but in aid thereof, and for the punishment of certain offenders unto whom the commission of the lords wardens of the marches did not extend; which offenders, although not employed in the protection of the country by virtue of the institution of the wardenship of the marches, yet demanded contribution of the inhabitants under pretence of preserving them from rapine and depredation by reason of the friendship and alliance which they had with the spoil-takers and robbers in those parts.

Blackmail] *Maile*, in *French* is a small piece of money; and in the 9 *H. 5.* silver halfpence here were termed *mailes*. In a large acceptation, the word *maile* signifies a rent in general, paid either in money, corn, cattle, or other goods, as *geese maile*, *cow maile*, and the like; and in *Scotland*, *maile* is still the common word for rent. *White maile*, white rents, (vulgarly called quit-rents,) where rents paid in silver, and thereby distinguished from work day rents, cummin rents, corn rents, and the like. *Black maile*, or black rents, seem properly to have been rents paid in cattle (otherwise called *neat gelt*, or *neat geld*,
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from the Danish *gelt*, *geld*, *geldum*, a payment or tribute); but more largely taken, it seemeth to have been used to signify all rents not paid in silver, in contradistinction to the *redditus albi*, blanch farms, or white rents. In parts where the ground was arable, rents were frequently paid in corn; and particularly in the border service, the officers and men appointed to guard against incursions, had for the sustentation of their horses part of their salaries paid in corn, to be raised upon certain estates subject to the enemies depredations; as they had also money out of other estates, and in others (which were near the place of service) they had meadows, foggage, poultry, fuel, and other necessities. The wardens of the marches had an officer called the *serjeant*, who seems to have been a *civil*, and not a *military* officer, for the execution of process, arresting offenders, and such like, in the nature of a bailiff or head constable; and his salary and appointments seem to have been of the like nature with those of the officers military. The *justices in eyre* also had officers attending them called *serjeants*, in the nature of tipstaves, who are taken notice of in the statute of *Westm.* 1. c. 30. In *Britton* the word *serjeant* is used for an officer of the county; and *Bracton* takes notice of a *serjeant of the hundred*. There was also *serjeants of manors*, who seem to have been the same with those called *land serjeants*; and these were not properly what are now stiled *bailiffs of the manor*, but a kind of superior bailiffs over divers manors; for in the setting or supervisal of the watch in the border service, we find sometimes several towns together, as three, four, or more, required to watch at certain fords and places, and the searchers, or examiners of the said watch are the *land-serjeant and bailiffs*, or the *land-serjeant bailiffs and constables* there. There is yet in *Westmorland* a payment called *serjeant oats*; but for which of these kinds of serjeants, or whether for any of them, it is difficult to say.

Deadly feud] *Feud* in the German signifies enmity, or war; as in like manner the word *foe* signifies an enemy. *Feud* in *Scotland*, is a combination of kindred to revenge injuries or affronts done or offered to any of their blood. *Deadly feud* is a profession of irreconcilable hatred, till a person is revenged even by the death of his adversary. And this seemeth to have sprung from the institution of the military tenures, whereby the tenant, upon admission to his estate, was obliged to swear fealty and allegiance to his

Northern borders.

his lord, and to take up arms at his lord's summons. This military establishment is what is commonly called the *feudal system*, by an easy derivation (as it should seem) from the word *feud*; although it hath given much trouble to the etymologists to investigate its origin elsewhere.— In the northern counties, where a number of thieves, rogues, and vagabonds combine together to commit rapine, theft, and other outrages, they are still denominated the *foe-gang*.

And, by the said statute, persons outlawed in any of the said counties for any such murder, robberies, burglaries, or other felonies, shall in two months be certified in writing by the clerk of the peace to all the sheriffs of all the said counties; and the said sheriffs shall proclaim them in *Carlisle, Penrith, Cockermouth, Appleby, Kendal, Newcastle, Morpeth, Alnwick, Hexam, Duresme, Darlington, Bishop Auckland, Bernard castle, and Berwick*, and once a month in every their county courts, till they surrender; and the mayors shall proclaim them in every fair, and every six weeks in the market; and persons relieving, or conferring with them, shall, on the like conviction, be imprisoned for six months, and bound to the good behaviour for a year. *f. 3, 4, 5, 6.*

Moss-troopers.

2. The justices of *Northumberland* and *Cumberland*, may make order in sessions, for charging the respective counties, for securing the same against the moss-troopers (that is, thieves and robbers, who after having committed offences in the borders, do escape through the wastes and moorlands); so as *Northumberland* be not charged above 500*l.* nor *Cumberland* above 200*l.* a year. And they may appoint a commander, with 30 men in *Northumberland*, and 12 men in *Cumberland*, to search for, pursue, and apprehend offenders. *13 & 14 C. 2. c. 22.*

And the persons so employed shall be chosen in sessions yearly, or every two years at the farthest. *29 & 30 C. 2. c. 2.*

And the sessions shall take security of the persons by them employed for preservation of the borders, to answer the damages sustained by their neglect or default, and to pay the same in four months after proof made thereof in sessions by oath of one witness; so as the goods stolen be entered in one of the books to be kept for that purpose, in 48 hours after they be stolen or gone; and books shall be kept for that end in every market town in the said counties, and in such other places, and by such per-

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persons, as the sessions shall appoint. 29 & 30 C. 2. c. 2.

And by the 18 C. 2. c. 3. Great and notorious thieves and spoil-takers in the said counties of *Northumberland* and *Cumberland*, shall suffer death as felons without benefit of clergy; or may be transported by order of the judges of assize, during life.

3. There seems to be a great defect in the law, where an offence is committed in *England* or *Scotland*, and the offender escapes or removes into the other kingdom. This matter was intended to be rectified in the time of king *James* the first, but was left undetermined (by reason of his quarrels with the parliament), and never afterwards resumed.

Offenders flying out of one kingdom into the other.

By the 4 7. c. 1. (in the year 1606) which is a very clear and judicious act, all offences of conjuration, witchcraft, and dealing with evil and wicked spirits, murder, manslaughter, felonious burning of houses and corn, burglary, robbing of houses by day, robbery, theft, buggery, and rape, committed by *Englishmen* in *Scotland*, shall be heard and determined in any of the counties of *Cumberland*, *Northumberland*, or *Westmorland*, as if they had been committed in such county. And any justice of the peace of the said counties respectively, may bind over the prosecutor and witnesses to prosecute and give evidence (so as the said witnesses have their reasonable charges first tendered to them).

And accessaries thereto in *England* may be tried, and executed, tho' the principal be not convicted.

And the offence shall be laid in the indictment to be done in *Scotland*, according to the truth of the fact; and not in the county where the trial is limited to be had,

And the indictment shall be good, notwithstanding the words "against the peace of our sovereign lord the king, his crown and dignity" be omitted.

Provided that no *Englishman* found guilty as aforesaid, shall forfeit his lands, nor shall his blood be corrupted, nor his wife lose her dower; but he shall forfeit his goods.

And forasmuch as a like act is intended to be made in *Scotland*, for punishing *Scotchmen* having committed any of the said offences in *England*, and returning back into *Scotland*; the justices in *England* shall have power, in that case, to bind over the prosecutor and witnesses to prosecute

Northern borders.

cute and give evidence in *Scotland* (so as their reasonable charges be first tendred to the said witnesses).

But no *Englishman* shall be sent out of *England* to receive his trial in *Scotland*, until both the realms shall be made one in laws and government.

But by the 7 J. c. 1. (in the year 1609) Whereas by reason of the aforesaid clause prohibiting *Englishmen* to be sent into *Scotland* to be tried, many offenders have escaped with impunity; it is therefore enacted, that if any person shall commit any offence within the realm of *Scotland*, which by the laws of this realm of *England* shall be petty treason, murder, manslaughter, felonious burning of houses and corn, burglary, robbing of houses by day, robbery, theft, or rape, and shall fly or escape into the realm of *England*, and be apprehended within any of the aforesaid counties in *England*; the justices of assize or one of them in the absence of the other, the justices of gaol delivery or any four of them, or justices of the peace in their general or quarter sessions or any four of them, may, upon due and mature examination of the offence in open sessions, and pregnant proofs of the same, by their warrant remand such offenders into the realm of *Scotland*, there to receive their trial for any of the aforesaid offences by them there committed.

Provided nevertheless, that this shall not take effect, till an act be made in *Scotland*, for remanding *Scotchmen* having committed offences in *England* to be tried for the said offences in *England*.

This act to continue in force to the end of the first session of the next parliament. (Further continued by the 3 C. c. 4. And by the 16 C. c. 4. continued indefinitely.)

There were three parliaments in *Scotland*, from the year 1606 to the year 1609 (both inclusive), in which nothing to this purpose was effected. But in the year 1612, in the 21st parliament of *James* the sixth of *Scotland*, an act was made as followeth:

Our sovereign lord and estates of parliament, considering that albeit the gude effects of his majesty's cairful providence to repress the innumerable disorders, crimes, and offences, whilks before his happy attaining to the

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crowne of *England* were very frequent in the bounds of the kingdomes of *Scotland* and *England* (which then being the borders of the two kingdoms, are now become the middle shires thereof), has reduced these parts to so gude progresse of peace and obedience, as in so short tyme could hardly have been expected; nevertheless it is founden by experience, that alsweel in these shires, as in divers uthers parts of both kingdoms, some evill disposed persons are emboldned to attempt and perpetrate many heynous crymes and offences upon hope of impunitie, if after the committing of the same in one country they may flee and escape to the other, and not be sent back to the place of their offence: It is therefore ordained, that if any person shall commit any cryme or offence within the realme of *England*, whilk by the laws of the kingdom of *Scotland* shall be petty treason, murder, manslaughter, felonious burning of houses and corn, burglarie, robbing of houses by day, robbery, theft, or rapt, and shall flee or escape into this realme of *Scotland*, and be apprehended there; it shall be lawful for the justice general or his ordainer depute, the scherifs, stuardes, lords, and ballyes of regalities, the commissioners of borders, or any two of them, in their ordinar courts, or the justices of peace in their general or quarter sessions or any four of them, upon due and mature examination of the offence, in open court or sessions, and pregnant pruiſſs of the same, by their warrand to remand such offenders into the realme of *England*, there to receive their tryell for any of the foirsaid offences committed by them within the realme of *England*.—Provyding nevertheless, that this shall not take effect, except an act be made in *England*, in the first session of the next parliament thereof, for remanding out of *England* into *Scotland* all persons who shall commit any of the crymes or offences foresaid within the realme of *Scotland*, and thereafter flee into *England*, to receive their tryell within the said realme of *Scotland*.

The next parliament in *England* was in the 18th year of the said king; which was dissolved without any acts made whatsoever, but only for the supply. And nothing appears further in the laws of either kingdom: Save that in the preamble of the abovementioned statute of the 13 & 14 C. 2. c. 22. it is recited, " That persons having committed crimes escape from one kingdom to the other, and so avoid the hand of justice; in regard the offences
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Northern borders.

cute and give evidence in *Scotland* (so as their reasonable charges be first tendred to the said witnesses).

But no *Englishman* shall be sent out of *England* to receive his trial in *Scotland*, until both the realms shall be made one in laws and government.

But by the 7 *J. c. 1.* (in the year 1609) Whereas by reason of the aforesaid clause prohibiting *Englishmen* to be sent into *Scotland* to be tried, many offenders have escaped with impunity; it is therefore enacted, that if any person shall commit any offence within the realm of *Scotland*, which by the laws of this realm of *England* shall be petty treason, murder, manslaughter, felonious burning of houses and corn, burglary, robbing of houses by day, robbery, theft, or rape, and shall fly or escape into the realm of *England*, and be apprehended within any of the aforesaid counties in *England*; the justices of assize or one of them in the absence of the other, the justices of gaol delivery or any four of them, or justices of the peace in their general or quarter sessions or any four of them, may, upon due and mature examination of the offence in open sessions, and pregnant proofs of the same, by their warrant remand such offenders into the realm of *Scotland*, there to receive their trial for any of the aforesaid offences by them there committed.

Provided nevertheless, that this shall not take effect, till an act be made in *Scotland*, for remanding *Scotchmen* having committed offences in *England* to be tried for the said offences in *England*.

This act to continue in force to the end of the first session of the next parliament. (Further continued by the 3 *C. c. 4.* And by the 16 *C. c. 4.* continued indefinitely.)

There were three parliaments in *Scotland*, from the year 1606 to the year 1609 (both inclusive), in which nothing to this purpose was effected. But in the year 1612, in the 21st parliament of *James* the sixth of *Scotland*, an act was made as followeth:

Our sovereign lord and estates of parliament, considering that albeit the gude effects of his majesty's cairful providence to repress the innumerable disorders, crimes, and offences, whilk before his happy attaining to the crown

crowne of *England* were very frequent in the bounds of the kingdomes of *Scotland* and *England* (which then being the borders of the two kingdoms, are now become the middle shyres thereof), hes reduced these parts to so gude progresse of peace and obedience, as in so short tyme could hardly have been expected; nevertheless it is founden by experience, that alsweel in these shyres, as in divers uthers parts of both kingdoms, some evill disposed persons are emboldned to attempt and perpetrate many heynous crymes and offences upon hope of impunitie, if after the committing of the same in one country they may flee and escape to the other, and not be sent back to the place of their offence: It is therefore ordained, that if any person shall commit any cryme or offence within the realme of *England*, whilk by the laws of the kingdom of *Scotland* shall be petty treason, murther, manslaughter, felonious burning of houses and corn, burglarie, robbing of houses by day, robbery, theft, or rapt, and shall fle or escape into this realme of *Scotland*, and be apprehended there; it shall be lawful for the justice general or his ordainer depute, the scherifs, stuardes, lords, and ballyes of regalities, the commissioners of borders, or any two of them, in their ordinar courts, or the justices of peace in their general or quarter sessions or any four of them, upon due and mature examination of the offence, in open court or sessions, and pregnant prouffs of the same, by their warrant to remand such offenders into the realme of *England*, there to receive their tryell for any of the soirsaides offences committed by them within the realme of *England*.—Provyding nevertheless, that this shall not take effect, except an act be made in *England*, in the first session of the next parliament thereof, for remanding out of *England* into *Scotland* all persons who shall commit any of the crymes or offences foresaides within the realme of *Scotland*, and thereafter fle into *England*, to receive their tryell within the said realme of *Scotland*.

The next parliament in *England* was in the 18th year of the said king; which was dissolved without any acts made whatsoever; but only for the supply. And nothing appears further in the laws of either kingdom: Save that in the preamble of the abovementioned statute of the 13 & 14 C. 2. c. 22. it is recited, "That persons having committed crimes escape from one kingdom to the other, and so avoid the hand of justice; in regard the offences
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Northern borders.

“petrated in the one kingdom cannot be punished in the other.”

So that, upon the whole, the matter seems to stand thus :

(1) *Englishmen* committing any of the said offences in *Scotland*, and returning into *England*, may be tried for the same in *England*: And the justices in *England* (within the limits of their commission respectively) may bind over the prosecutor and witnesses, (whether *English* or *Scotch*) to prosecute and give evidence in *England*. And this is by virtue of the aforesaid statute of the 4 J. c. 1.

(2) *Englishmen* committing any of the said offences in *Scotland*, and returning into *England*, may not be sent back into *Scotland* to be tried there. This was indeed enacted by the aforesaid statute of the 7 J. c. 1. but it was with a proviso, that the *Scots* should make an act to the like purpose: Which the *Scots* never did, but with a proviso (as in the aforesaid *Scotch* act) that the *English* in the first session of their next parliament should do the same; which parliament was dissolved before any business of that kind could be done.

(3) *Scotchmen* committing any of the said offences in *England*, and returning into *Scotland*, may not be tried for the same in *Scotland*. This was intended to be enacted by a law in *Scotland* (as appears by the clause in the aforesaid act of the 4 J. c. 1.); and the justices in *England* were to have power in that case to bind over the prosecutor and witnesses to prosecute and give evidence in *Scotland*. But such law in *Scotland* was never made.

(4) *Scotchmen* committing any of the said offences in *England*, and returning into *Scotland*, may not be sent back into *England* to be tried. This also was intended by the aforesaid *Scotch* act; but the same (as was observed before) was not carried into execution by the *English* parliament.

(5) *Englishmen* committing offences in *England*, and flying into *Scotland*, cannot be apprehended in *Scotland* by any authority from the justices in *England*, nor by any power of the justices or others in *Scotland*: And consequently may escape with impunity.

(6) *Scotchmen* in like manner committing offences in *Scotland*, and flying into *England*, cannot be apprehended in *England* by any authority from the laws of either kingdom.

So that here must be of necessity a failure of justice. And with respect to inferior offences, and other felonies not above specified, no provision at all seemeth to have been made, by any act of parliament of either kingdom.

Nuisance.

I. *What it is.*

II. *How it may be removed.*

III. *How punished.*

I. *What it is.*

A Common nuisance seems to be, an offence against the publick, either by doing a thing which tends to the annoyance of all the king's subjects, or by neglecting to do a thing which the common good requires. 1 *Haw.* 197.

Annoyances to the prejudice of particular persons, are not punishable by a publick prosecution as common nuisances, but are left to be redressed by the private actions of the parties aggrieved by them. 1 *Haw.* 197.

Where note a diversity between a *private* and a *publick* nuisance: If it is a *private* nuisance, he shall have his action upon his case, and recover his damages; but if it is a *publick* nuisance, he shall not have an action upon his case, and this the law hath provided for avoiding of multiplicity of suits, for if any one might have an action, all men might have the like; but the law for this common nuisance hath provided an apt remedy, by presentment or indictment at the suit of the king, in the behalf of all his subjects; unless any man hath a particular damage, as if he and his horse fall into a ditch made across a highway, whereby he received hurt and loss, there for his special damage which is not common to others, he shall have an action upon his case. 1 *Inst.* 56.

And from hence it clearly follows, that no indictment for a nuisance can be good, which lays it to the damage of private persons only; as where it accuses a man of surcharging

Nuisance.

charging such a common; or of inclosing such a piece of ground, wherein the inhabitants of such a town have a right of common, to the nuisance of all the inhabitants of such a town; or of disturbing a watercourse running to such a mill, to the damage of such a person and his tenants, without saying of all the liege subjects of the king.

1 Haw. 197.

Yet it hath been said, that an indictment of a common scold is good, although it conclude to the common nuisance of divers, instead of all, the king's subjects; perhaps for this reason (says Mr. Hawkins) because a common scold cannot but be a common nuisance. 1 Haw. 198.

And if the law be so in this case, why should not an indictment setting forth a nuisance to a way, and expressly and unexceptionably shewing it to be a highway, be good, notwithstanding it conclude to the nuisance of divers, without saying all the king's subjects? And perhaps the authorities which seem to contradict this opinion, might go upon this reason, that in the body of the indictment, it did not appear with sufficient certainty, whether the way, wherein the nuisance was alledged, were a highway, or only a private way; and therefore that it shall be intended from the conclusion of the indictment, that it was a private way.

1 Haw. 198.

There is no doubt but that common bawdy houses are indictable as common nuisances; and it hath been said, that all common stages for rope dancers, and also all common gaming houses, are nuisances in the eye of the law, not only because they are great temptations to idleness, but also because they are apt to draw great numbers of disorderly persons. 1 Haw. 198.

Also it hath been holden, that a common play house may be a nuisance, if it draw together such a number of coaches or people, as prove generally inconvenient to the places adjacent. 1 Haw. 198.

Erecting a shed so near a man's house, that it stops up his lights, is not a nuisance for which an action will lie, unless the house is an ancient house, and the lights ancient lights. 2 Salk. 459.

Also stopping a prospect is not a common nuisance. 3 Salk. 247.

A gate erected in a highway, where none had been before, is a common nuisance. 1 Haw. 199.

It hath been holden, that it is no common nuisance to make candles in a town because the needfulness of them shall dispense with the noisomeness of the smell; but the reasonableness

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reasonableness of this opinion seems justly to be questionable, because whatever necessity there may be that candles be made, it cannot be pretended to be necessary to make them in a town: And surely the trade of a *brewer* is as necessary as that of a *chandler*; and yet it seems to be agreed, that a *brewhouse* erected in such an inconvenient place, wherein the business cannot be carried on without greatly incommoding the neighbourhood, may be indicted as a common nuisance: And so in like case may a *glass house*, or a *swine yard*. 1 Haw. 199.

Two persons were indicted for making great quantities of *noisome, offensive, and stinking liquors*, called acid spirit of sulphur, oil of vitriol, and oil of aqua fortis; whereby the air was impregnated with noisome and offensive smells: And it was held by the court to be a nuisance. The word *noisome* comes in the place of the Latin *nocivus*; and means not only disagreeable, but hurtful. And lord Mansfield said, it is not necessary, to constitute the offence, that the smell should be *unwholsome*; it is enough, if it renders the enjoyment of life and property *uncomfortable*. Burrow. Mansfield. 333. Rex v. White and Ward. E. 30 G. 2.

A person was indicted for making great noises in the night with a *speaking trumpet*, to the disturbance of the neighbourhood; and it was held by the court to be a nuisance. T. 12 G. K. and Smith. Str. 704.

But it hath been resolved, that neither an old, nor a new *dove-cote* is a common nuisance; but perhaps if a tenant hath erected one without licence of the lord of the manor, the lord may have an action on his case against him. 1 Haw. 198.

A *monster shewn* for money is a misdemeanor. 2 Cha. Ca. 110. T. 34 C. 2. Haring and Walrond. It was a monstrous child, that died, and was embalmed to be kept for shew; but was ordered by the lord chancellor to be buried.

If a man has a *dog* that kills sheep, that is not a publick nuisance, but the owner of the dog (knowing thereof) is liable to an action; but if he is ignorant of such quality, he shall not be punished for this killing: And in an action upon the case for such killing, the plaintiff shall be required to prove in evidence, that the dog had used to kill sheep. Dyer 25. Het. 171.

If a man has an unruly *horse* in his stable, and leaves open the stable door, whereby the horse gets forth and doth

Nuisance.

doth mischief, an action lies against the master. *1 Vent.* 295.

In the case of *Buxendin and Sharp, E. 8 W.* The plaintiff declared, that the defendant kept a bull, that used to run at men, but did not say that the defendant knew of this quality; it was adjudged, that an action did not lie, unless it did appear that the master knew of this quality. *2 Salk.* 662.

There is a difference between beasts that are *feræ naturæ*, as lions and tygers, which a man must always keep up at his peril; and beasts that are *mansuetæ naturæ*, and break thro' the tameness of their nature, such as oxen and horses. In the latter case, an action lies, if the owner has had notice of the quality of the beast; but in the former case, an action lies without such notice. *Ld. Raym.* 1583.

But after such wild beasts have escaped from their keeper, so as to regain their natural liberty; in such case, he that kept them before, shall not answer for the damage they shall commit after he hath lost them, and they have resumed their wild nature. *1 Ventr.* 295.

A mastiff, going in the street unmuzzled, from the ferocity of his nature being dangerous and cause of terror to his majesty's subjects, seemeth to be a common nuisance, and consequently the owner may be indicted for suffering him to go at large.

II. How it may be removed.

It seemeth to be certain, that any one may pull down or otherwise destroy a common nuisance, as a new gate, or even a new house erected in a highway, or the like: for if one whose estate is or may be prejudiced by a private nuisance actually erected, as a house hanging over his ground, or stopping his lights, may justify the entering into another's ground and pulling down and destroying such a nuisance, whether it were erected before or since he came to the estate, it cannot but follow *a fortiori*, that any one may lawfully destroy a common nuisance: And as the law is now holden, it seems that in a plea, justifying the removal of the nuisance, a man need not shew that he did as little damage as might be. *1 Haw.* 199.

But although he may remove the nuisance, yet he cannot remove the materials, or convert them to his own use. *Dalt.* c. 50.

III. How

III. How punished.

It is said, that a common scold is punishable (after conviction, upon indictment) by being placed in a certain engine of correction called the trebucket or cucking stool; 1 *Haw.* 200.

Note; *cuck* or *guck* in the Saxon tongue (according to lord Coke) signifieth to scold or braw; taken from the bird *cuckoo* or *guckhaw*; and *ing* in that language signifieth water; because a scolding woman was for her punishment sowed in the water. 3 *Inst.* 219. The common people in the northern parts of England, amongst whom the greatest remains of the ancient Saxon are to be found, pronounce it *ducking stool*; which perhaps may have sprung from the Belgick or Teutonick *ducken*, to dive under water; from whence also probably we denominate our *duck* the water fowl; or rather, it is more agreeable to the analogy and progression of languages, to assert, that the substantive *duck* is the original, and the verb made from thence; as much as to say, that to *duct* is to do as that fowl does.

And she may be convicted, without setting forth the particulars in the indictment. 2 *Haw.* 227.

Nevertheless, the offence must be set forth with convenient certainty; and the indictment must conclude not only *against the peace*, but *in the common nuisance of divers of his majesty's liege subjects*. And in the case of *K. and Margaret Cropper*, H. 19 G. 2. She was convicted on an indictment, for being a common and turbulent brawler, and sower of discord amongst her quiet and honest neighbours, so that she hath stirred, moved, and incited divers *strifes, controversies, quarrels, and disputes*, amongst his majesty's liege people, against the peace, &c. It was moved on arrest of judgment, that the charge was too general, and did not amount to being either a brawler or common scold, which are the only instances in which a general charge will be sufficient. It was likewise objected, that if the words did amount to a description of a scold, yet it should be said to be to the common nuisance of her neighbours, for every degree of scolding is not indictable. And the court was of opinion, that the judgment ought to be arrested on both exceptions; for none of the words here used are the tech-

nical words, and it must be laid to be to the common nusance. *Str.* 1246. *

There is no doubt, but that whoever is convicted of another nusance, may be fined and imprisoned; and it is said, that one convicted of a nusance done to the king's highway, may be commanded by the judgment to remove the nusance at his own costs: and it seemeth to be reasonable, that those who are convicted of any other common nusance, should also have the like judgment. *1 Haw.* 200. *Str.* 886.

And the defendant shall not be allowed to make any objections against the indictment, until he hath pleaded to it. *Dalt.* c. 66.

And the court never admits a person convicted of a nusance, to a small fine, until proof is made of the nusance being removed. *Dalt.* c. 66.

A master is indictable for a nusance done by his servant. *Ld. Raym.* 264.

All common nusances are indictable not only at the sessions, but also in the torn and leet. *2 Haw.* 67.

An act of general pardon only discharges the fine, but not the abatement of the nusance. *2 Salk.* 458.

There are many offences by particular statutes declared to be common nusances, which are treated of under their respective titles.

General indictment for a nusance.

Westmorland. **T**HE jurors for our lord the king upon their oath present, That A. O. late of _____ in the county of _____ yeoman, on the _____ day of _____ in the _____ year of the reign of _____ and on divers other days and times, as well before as afterwards, with force and arms at _____ in the said county, [here set forth the nusance;] and the same (nusance) so as afore-

* It seemeth to favour not much of gallantry that our ancestors supposed none but women could be guilty of this offence; for the Latin expression is, *communis braciatrix*: and upon that account it may seem a little inadequate, that for this offence they shall be tried by a jury of men.—Not much more polite are the old grammarians who lay it down as an axiom, amongst the first rudiments of the Latin tongue, that *the masculine gender is more worthy than the feminine.*

said done, doth yet continue and suffer to remain; to the common nusance of all the lieges and subjects of our said lord the king, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

Oaths.

I. Of oaths in general.

II. The common forms of oaths.

III. Quakers oaths.

IV. Oaths of infidels.

I. Of oaths in general.

1. **OATH** is a corruption of the Saxon word *eoth*. Oath:
3 *Inst.* 165.

2. It is called a corporal oath, because the person lays his hand upon some part of the scriptures when he takes it. 3 *Inst.* 165. Corporal oath.

3. If the oath be taken on the common prayer book; which hath the epistles and gospels, it is good enough, and perjury upon the statute may be assigned upon this oath. 2 *Keb.* 314. Oath taken on the common prayer book.

4. The words, *So help me God*, in the common form of an oath, perhaps may have been first used in the very ancient manner of trial by battle in this kingdom, or at least are delivered with a peculiar emphasis in that solemnity; wherein the appellee lays his right hand on the book, and with his left hand takes the appellant by the right, and swears to this effect, *Hear this, thou who callest thyself John by the name of baptism, whom I hold by the hand, that falsely upon me thou hast lied; and for this thou liest, that I who call myself Thomas by the name of baptism, did not feloniously murder thy father W. by name—So help me God;—* (and then he kisses the book and says)

and this I will defend against thee by my body, as this court shall award. And so the appellant is sworn in like manner.

[Where we may observe also the genuine foundation, as it seemeth, of the *lie* being esteemed still so great an affront above all others, as whenever it is pronounced, to cause an immediate affray and bloodshed.]

Power of administering an oath.

5. No ancient oath can be altered, or new oath imposed, without an act of parliament; nor can any oath be administered by any, that have not allowance by the common law time out of mind, or by an act of parliament. 2 *Inst.* 479. 3 *Inst.* 165.

And this is the reason why generally there is a clause in the statutes, giving power to the justices to this or the like effect [*which oath such justice is hereby impowered to administer*;] tho' it seems to be clear, that if an act impowers a justice, in a summary way to convict an offender by the oath of a witness, it doth (without any more) of necessity give him power to administer the oath to that witness; and that it is sufficiently implied in the words, and necessarily included in the power. For when the law grants any thing, that also is granted, without which the thing itself cannot be. 12 *Co.* 130, 131.

Perjury.

6. Where an oath is administered by a person that hath lawful authority to tender the same, and it be afterwards broken, yet if it be not in a judicial proceeding, it is no perjury, nor punishable by the common law. 3 *Inst.* 166.

Therefore if one call another a *perjured* man, he may have an action on the case, because it shall be intended to be contrary to his oath in a judicial proceeding; but for calling one a *forsworn* man, no action lies; because the forswearing may be extrajudicial, and consequently no perjury in law. 3 *Inst.* 166.

Of the oath of allegiance.

7. Every layman, above the age of 12 years, was anciently obliged to take the oath of allegiance at the tournoir, leet, and it was a high contempt to refuse it. 1 *Inst.* 68.

But the clergy were not obliged to take the oath of allegiance till the reformation, any further than doing homage to the king for the lands held of him in right of the church. 1 *H. H.* 71, 72.

Lord Hale, speaking of the ancient oath of allegiance, which continued above 600 years, says, that therein the prudence of the common law is observable, that it was

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short and plain, not intangled with long and intricate clauses or declarations, but that the sense of it was obvious to the most common understanding, and yet withal comprehensive of the whole duty of a subject to his prince. 1 H. H. 63. And from this the present form of the oath of allegiance hath not much varied.

8. The oath of supremacy came in, upon abolishing the papal authority at the reformation.

Of the oath of supremacy.

9. The oath of abjuration came in after the revolution; received some alterations in the first year of queen Anne; and again in the first year of king George the first; and finally, in the sixth year of king George the third.

Of the oath of abjuration.

Perhaps it might be wished, that it were made more applicable to lord Hale's rule, it being more short and plain; there being in it several hard words, which probably many who take it do not well understand; and there being an act of parliament therein referred to, which perhaps not one in fifty who take it have consulted.

10. Two justices may summon by writing under hand and seal, any person whom they shall suspect to be dangerous or disaffected to the government, to appear before them, at a certain day and time therein to be appointed, to take the oaths of allegiance, supremacy, and abjuration, and if such person neglects or refuses to appear, then on due proof made on oath of the summons having been served on such person, or left at his dwelling house, or usual place of abode, with one of the family there, they shall certify the same to the next sessions, there to be recorded by the clerk of the peace. And if such person shall neglect or refuse to appear and take the oaths at the said sessions (the name of such person being publicly read at the first meeting of the said sessions), then such person shall be esteemed and adjudged a popish recusant convict: and the same shall be thence certified, by the clerk of the peace into the chancery or king's bench, to be there recorded. 1 G. st. 2. c. 13. s. 10, 11.

Summoning persons to take the oaths.

Whom they shall suspect] It seemeth that a bare suspicion is not sufficient, but there should be some good cause of suspicion, and that the cause of suspicion is traversable. *Read. Oath.*

Refuse—to take the oaths] A person cannot be said to refuse the oaths, unless they be read to him, or offered to be read. *Read. Oath.*

II. The common forms of oaths.

Oath of allegiance.

1. The oath of allegiance, by the 1 G. 1. c. 13.
I A. B. do sincerely promise and swear, that I will be faithful, and bear true allegiance to his majesty king George; So help me God.

Oath of supremacy.

2. The oath of supremacy, by the 1 G. 1. c. 13.
I A. B. do swear, that I do from my heart abhor, detest, and abjure, as impious and heretical, that damnable doctrine and position, that princes excommunicated or deprived by the pope, or any authority of the see of Rome, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare, that no foreign prince, person, prelate, state, or potentate, hath, or ought to have, any jurisdiction, power, superiority, pre-eminence or authority, ecclesiastical or spiritual, within this realm; So help me God.

Oath of abjuration.

3. The oath of abjuration, by the 6 G. 3. c. 53.
I A. B. do truly and sincerely acknowledge, profess, testify, and declare in my conscience, before God and the world, that our sovereign lord king George is lawful and rightful king of this realm, and all other his majesty's dominions thereunto belonging. And I do solemnly and sincerely declare, that I do believe in my conscience, that not any of the descendants of the person who pretended to be prince of Wales during the life of the late king James the second, and since his decease pretended to be, and took upon himself, the style and title of king of England, by the name of James the third, or of Scotland, by the name of James the eighth, or the style and title of king of Great Britain, hath any right or title whatsoever, to the crown of this realm, or any other the dominions thereunto belonging; And I do renounce, refuse, and abjure any allegiance or obedience to any of them. And I do swear, that I will bear faith and true allegiance to his majesty king George, and him will defend, to the utmost of my power, against all traiterous conspiracies and attempts whatsoever, which shall be made against his person, crown or dignity. And I will do my utmost endeavour to disclose and make known to his majesty, and his successors, all treasons and traiterous conspiracies which I shall know to be against him or any of them. And I do faithfully promise, to the utmost of my power, to support, maintain and defend the succession of the crown against the descendants of the said James, and against all other persons whatsoever; which succession, by an act, intituled, An act for the further limitation of the crown, and better securing the rights and liberties

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liberties of the subject, is and stands limited to the princess Sophia, electress and dutchess dowager of Hanover, and the heirs of her body being protestants. And all these things I do plainly and sincerely acknowledge and swear, according to these express words by me spoken, and according to the plain and common sense and understanding of the same words, without any equivocation, mental evasion, or secret reservation whatsoever. And I do make this recognition, acknowledgment, abjuration, renunciation, and promise, heartily, willingly, and truly, upon the true faith of a christian: So help me God.

4. The declaration against transubstantiation; by the 25 C. 2. c. 2. s. 9. Declaration against transubstantiation.

I A. B. do declare, that I do believe, that there is not any transubstantiation in the sacrament of the Lord's supper or in the elements of bread and wine, at or after the consecration thereof by any person whatsoever.

5. The declaration against popery; by the 30 C. 2. s. 2. c. 1. Declaration against popery.

I A. B. do solemnly and sincerely, in the presence of God, profess, testify and declare, that I do believe, that in the sacrament of the Lord's supper there is not any transubstantiation of the elements of bread and wine into the body and blood of Christ, at or after the consecration thereof by any person whatsoever: And that the invocation, or adoration of the virgin Mary, or any other saint, and the sacrifice of the mass, as they are now used in the church of Rome, are superstitious and idolatrous: And I do solemnly in the presence of God, profess, testify and declare, That I do make this declaration, and every part thereof, in the plain and ordinary sense of the words read unto me, as they are commonly understood by English protestants, without any evasion, equivocation, or mental reservation whatsoever, and without any dispensation already granted me for this purpose by the pope, or any other authority or person whatsoever, and without any hope of any such dispensation from any person or authority whatsoever, or without thinking that I am or can be acquitted before God or man, or absolved of this declaration, or any part thereof, although the pope, or any other person or persons, or power whatsoever, shall dispense with or annul the same, or declare that it was null or void from the beginning.

III. Quakers oaths.

1. In all cases wherein by any act of parliament an Affirmation oath shall be allowed or required, the solemn affirmation allowed.

of quakers shall be allowed instead of such oath; and that, altho' no express provision be made for that purpose in such act. 22 G. 2. c. 46. And therefore such provisions, which are very frequent in acts of parliament, are superfluous.

Perjury incurred by false affirmation.

2. And if any person shall be lawfully convicted of wilful, false, and corrupt affirming or declaring any matter or thing, which if sworn in the usual form would have amounted to wilful and corrupt perjury, he shall suffer as in cases of perjury. 8 G. c. 6. f. 2.

Affirmation not allowed in criminal matters.

3. But no quaker shall by virtue hereof be qualified or permitted to give evidence in any criminal cause, or serve on any juries, or bear any office or place of profit in the government. 7 & 8 W. c. 34. f. 6.

In any criminal cause] By which words it seemeth, that a quaker shall not have sureties of the peace or good behaviour granted to him, or have a warrant to search for stolen goods, or sue the hundred for damages in case of robbery, and the like, upon his bare affirmation; but that in all such cases, an oath is first necessary to be made.

Thus, *T. 4 G. 2. K. and Wych.* It was denied to read a quaker's affirmation, on a motion for an information for a misdemeanor. *Stra.* 872.

T. 7 G. Robins and Sayward. By the court, We cannot ground an *attachement* for non-performance of an award, on the affirmation of a quaker; for though it be in a suit between party and party, yet it is a criminal prosecution within the proviso of the statute. *Sir.* 441.

H. 3 G. 2. Casell, widow, against *Bambridge* and *Corbet.* In an *appeal* of murder, a quaker was called for a witness, and it was insisted that this is a civil suit between party and party, and not between the king and the party, and therefore his affirmation ought to be taken. But *Raymond* Ch. J. said, it was to this purpose a criminal proceeding, and therefore he could not be a witness. *Sir.* 856.

H. 8 G. 3. K. and Gardner. The affirmation of a quaker was offered, in *exculpation* of Mr. Gardner the defendant, upon shewing cause why an information should not be exhibited against Mr. Gardner for a misdemeanor. The reading of this affirmation was objected to. And the court held clearly, 1. That a quaker's affirmation could not be read in support of a criminal charge. But,

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2. They thought that an affirmation might be read in defence of a criminal charge, if the person charged was himself a quaker, in order to exculpate himself. 3. In this case of a collateral evidence, in assistance of the exculpation of another person, when the quaker himself was not charged at all, they thought his affirmation ought not to be read. And accordingly it was withdrawn. *Burrow, Mansfield. 1117.*

Or bear any office or place of profit in the government] E. 33 G. 2. K. and March. By an act of the 26 G. 2. c. 18. a certain oath is required to be taken and subscribed upon admission to the freedom of the Turkey company. *Isaac Rogers*, a quaker, had made and subscribed his solemn affirmation and declaration to the effect of the oath. The question was, whether this ought to be admitted instead of the oath. By the court, This is no office or place of profit in the government. This man's claim is nothing more, than to be admitted into a company of merchants trading to a particular part of the world. Even the remittances of publick money for the use and account of the government, given by his majesty to quakers, tho' the same may be very profitable, yet such appointment is no office or place in the government. *Burrow, Mansfield. 999.*

4. The quakers solemn affirmation, instead of an oath, as finally settled by the 8 G. c. 6. is as follows; viz. General form of affirmation.

" I A. B. do solemnly, sincerely, and truly declare and affirm."

5. Instead of the oaths of allegiance and supremacy, quakers shall be allowed to make the following declaration of fidelity. Declaration of fidelity.

I A. B. do solemnly and sincerely promise and declare, that I will be true and faithful to king George; and do solemnly, sincerely and truly profess, testify and declare, that I do from my heart abhor, detest, and renounce, as impious and heretical, that wicked doctrine and position, that princes excommunicated or deprived by the pope, or any authority of the see of Rome, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare, that no foreign prince, person, prelate, state, or potentate, hath or ought to have, any power, jurisdiction, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm.

6. By the same act of the 8 G. c. 6. Quakers were allowed to take the effect of the abjuration oath according to the form therein prescribed. After the death of the Abjuration.

the person pretending to be king of England by the name of James the third, it became necessary to alter the form of the abjuration oath. Accordingly by the 6 G. 3. c. 53. a new form of abjuration oath is prescribed. But neither by that act; nor any other, is any provision made, for altering the quakers affirmation or declaration conformable thereunto. It seemeth that the form thereof ought to be thus :

I A. B. do solemnly, sincerely, and truly acknowledge, profess, testify, and declare, that king George is lawful and rightful king of this realm, and of all other his dominions and countries thereunto belonging; and I do solemnly and sincerely declare, that I do believe, that not any of the descendants of the person who pretended to be prince of Wales during the life of the late king James the second, and since his decease pretended to be, and took upon himself the style and title of king of England, by the name of James the third, or of Scotland, by the name of James the eighth, or the style and title of king of Great Britain, hath any right or title whatsoever to the crown of this realm, or any other the dominions thereunto belonging; and I do renounce and refuse any allegiance or obedience to any of them. And I do solemnly promise, that I will be true and faithful, and bear true allegiance to king George, and to him will be faithful, against all traiterous conspiracies and attempts whatsoever, which shall be made against his person, crown, or dignity. And I will do my best endeavour to disclose and make known to king George, and his successors, all treasons and traiterous conspiracies, which I shall know to be against him, or any of them. And I will be true and faithful to the succession of the crown against the descendants of the said James, and against all other persons whatsoever, as the same is and stands settled by an act, intituled, An act declaring the rights and liberties of the subject, and settling the succession of the crown, to the late queen Anne, and the heirs of her body, being protestants; and as the same, by one other act, intituled An act for the further limitation of the crown, and better securing the rights and liberties of the subject, is and stands settled and intailed, after the decease of the said late queen; and for default of issue of the said late queen, to the late princess Sophia, electress and dutchess dowager of Hanover, and the heirs of her body, being protestants. And all these things I do plainly and sincerely acknowledge, promise, and declare, according to these express words by me spoken, and according to the plain and common sense and understanding of the same words, without any equivocation, mental evasion, or secret reservation whatsoever. And I do make this recognition, acknowledgment,

knowledge, renunciation, and promise, heartily, willingly, and truly.

7. The quakers profession of their belief ; by the 1 W. Profession of belief.
c. 18.

I A. B. profess faith in God the father, and in Jesus Christ his eternal son, the true God, and in the holy spirit, one God blessed for evermore ; and do acknowledge the holy scriptures of the old and new testament to be given by divine inspiration,

IV. Oaths of infidels.

1. A Jew is to be sworn on the old testament, and perjury upon the statute may be assigned upon this oath.

2 Keb. 314.

H. 2 G. 2. Gomez Serra and Munex. Upon error in debt upon a bond, the bail being both Jews were suffered to put on their hats while they took the oath. Str. 821.

When Jews take the oath of abjuration, the words [on the true faith of a christian] shall be omitted. 10 G.

c. 4. s. 18.

2. At the council, Dec. 9. 1738. Present the two Heathens, chief justices. On a complaint of Jacob Fachina against general Sabine, as governor of Gibraltar ; Alderaman Ben Monso, a Moor, was produced as a witness, and sworn upon the Koran. Str. 1104.

So in the case of Omichund against Barker, H. 18 G. 2. In the court of chancery, the depositions of several persons who were heathens of the Gentou religion, sworn after their own country manner, were admitted to be read. 2 Eq. Cas. Abr. 397. 1 Atk. 21.

Concerning the taking of oaths for qualifying for offices, see title Office.

And concerning the offences of profane cursing and swearing, see title Swearing.

Office.

I. Concerning the qualification for offices in corporations.

II. Concerning the qualification for offices in general.

III. Duty on the perquisites of offices.

I. Qualification for offices in corporations.

To receive the sacrament, and take the oaths.

1. **N**O persons shall be placed, elected, or chosen, to any office or place of mayor, aldermen, recorder, bailiff, town clerk, common council man, or other office of magistracy, place, or trust, or other employment, relating to the government of cities, corporations, boroughs, cinque ports, and other port towns, who shall not have received the sacrament according to the rites of the church of *England*, within one year next before such election: And every person so placed or elected, shall take the oaths of allegiance and supremacy, at the same time that the oath of office is taken; which shall be administered by those, who by charter or usage administer the oath of office; and in default of such, by two justices of the corporation, if there be any such; or otherwise by two justices of the county. And in default thereof every such election and placing shall be void. 13 C. 2. §. 2. c. 1. 5 G. c. 6. §. 1, 2.

And it hath been adjudged, to be no excuse, that the oaths were not tendered. 1 *Haw.* 10.

Yet notwithstanding that the words of this act of the 13 C. 2. (and also of the 25 C. 2. hereafter following) are so very strong as to make the officer's election void to all intents and purposes, yet it hath been strongly holden, that the acts of a person under such a disability, being instated in such an office, and executing the same without any objection to his authority, may be valid as to strangers; for otherwise not only those who no way infringe this law, but even those whose benefit is intended to be advanced by it, might be sufferers for another's fault, to which they are no way privy; and one chasm in a corporation, happening thro' the default of one head officer, would perpetually vacate the acts of all others, whose authority, in

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respect of their admission into their offices, or otherwise, may depend on his. 1 *Haw.* 10.

2. Which said justices abovementioned shall cause memorandums to be made of such oaths taken before them, and delivered once a year to the town clerk, or other register or clerk, who shall enter the same in their books. Entering the same.

13 *C. 2. ft. 2. c. 1.*

3. But no such office shall be void on account of not having received the sacrament, unless the person shall be removed in six months, or unless prosecution shall be commenced in six months, and carried on without wilful delay. Limitation of actions.

5 *G. 2. ft. 3.*

And if there be no such removal, or prosecution within the said time limited; the election stands confirmed, and becomes absolute. *Burrow, Mansfield. 1013. Crawford and Powell, T. 33 & 34 G. 2.*

4. And generally there is a clause of indemnification in some act in almost every session of parliament, provided they qualify on or before a time in such act limited. General clause of indemnification.

II. Qualification for offices in general

1. Every person who shall be admitted into any office civil or military, or shall receive any pay by reason of any patent or grant from the king, or shall have any command or place of trust in *England* or in the navy, or shall have any service or employment in the king's household; shall, within three months after his admission, receive the sacrament according to the usage of the church of *England* in some publick church on the Lord's day, immediately after divine service and sermon: And in the court where he takes the oaths (as hereafter mentioned, which shall be within six months after his admission) he shall first deliver a certificate of such his receiving the sacrament, under the hands of the minister and churchwardens, and shall then make proof of the truth thereof, by two witnesses on oath. And they shall also, when they take the said oaths, make and subscribe the declaration against transubstantiation. 25 *G. 2. c. 2. ft. 2. 3. 9.* Receiving the sacrament, and subscribing the declaration.

Any office civil or military] This seemeth evidently not to extend to ecclesiastical offices; and it may well be taken for granted, that clergymen need not to make such proof of their conformity to the church of *England*. But, by the following statute, they are to take the oaths as other persons qualifying for offices.

Also

Also this shall not extend to the office of any high constable, petty constable, tithingman, headborough, overseer of the poor, churchwarden, surveyor of the highways, or any like inferior civil office, or to any office of forester, or keeper of any park, chase, warren, or game, or of bailiff of any manor or lands, or to any like private offices. *f. 17.*

Taking the
oaths.

2. Every person who shall be admitted into any office civil or military; or shall receive any pay by reason of any patent or grant from the king; or shall have any command or place of trust in *England*, or in the navy; or shall have any service or employment in the king's household; all ecclesiastical persons; heads and members of colleges, being of the foundation, or having any exhibition, of eighteen years of age; and all persons teaching pupils; school-masters and others; preachers and teachers of separate congregations; high constables, and practisers of the law, shall, within six kalendar months after such admission, take and subscribe the oaths of allegiance, supremacy and abjuration, in one of the courts at *Westminster*, or at the general or quarter sessions of the place where he shall be or reside, between the hours of nine and twelve in the forenoon, and no other; and during the time of taking thereof, all proceedings in the said courts shall cease. *1 G. 2. c. 13. f. 2. 2 G. 2. c. 31. f. 3, 4. 9 G. 2. c. 26. f. 3. 25 C. 2. c. 2. f. 2.*

But this shall not extend to the office of tythingman, headborough, overseer of the poor, churchwarden, surveyor of the highways, or any like inferior civil office, or to any office of forester, or keeper of any park, chase, warren, or game, or of bailiff of any manor or lands, or to any like private offices. *1 G. 2. c. 13. f. 20.*

Which exception is the same with that in the *25 C. 2.* save only, that *high constables* and *petty constables* by name are here omitted. *Petty constables* nevertheless seem to be excepted, as holding a *like inferior civil office* with the *tithingman* or *headborough*: But *high constables* are expressly inserted amongst the other officers required to take the oaths; although they are exempted by the former act, from being required to produce a certificate of their having received the sacrament, and from subscribing the declaration against transubstantiation.

Inrolling and fee.

3. And the court shall inroll such persons names, with the day and time of taking the oaths, and making the declaration, in rolls kept for that purpose only; which shall be hung up in some publick place of such court during the

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the whole time of its sitting, to be seen without fee.
25 C. 2. c. 2. f. 6.

And the clerk of the peace shall have no more than 2 s.
for the entry. 1 G. 2. c. 13. f. 9.

But no seaman or soldier, under the degree of a commis-
sion or warrant officer, shall pay any fee for taking the
oaths. 1 G. 2. c. 13. f. 31.

4. Every person making default herein, shall be incapa-
ble to hold his office; and if he shall execute his office,
after the said times are expired, he shall, upon conviction,
be disabled to sue in any action, or to be guardian, or
executor, or administrator, or capable of any legacy or
deed of gift, or to bear any office, or vote at an election
for members of parliament, and shall forfeit 500 l. to him
who shall sue for the same. 25 C. 2. c. 2. f. 4, 5. 1 G.
2. c. 13. f. 8.

Penalty of exe-
cuting the office
unqualified.

5. But persons beyond the seas, shall not be disabled,
if they shall qualify within six months after their return.
9 G. 2. c. 26. f. 4.

Exception of per-
sons beyond seas.

6. Also no married woman, or person under 18 years
of age, or *non compos mentis*, shall forfeit their office (other
than such married woman during the life of her husband
only) if they take the oaths, and do the other things re-
quired, within four months respectively, after the death of
the husband, coming to the age of 18 years, and becoming
of sound mind. 25 C. 2. c. 2. f. 13.

Feme covert :
Infant : Non
compos.

7. Likewise, by some act in almost every session of
parliament, persons who have omitted to qualify them-
selves in due time, are indemnified, provided they qualify
within a time in such act limited, and provided judgment
hath not been given against them for the penalty in-
curred by their neglect, and provided their place is not
filled up.

General clause of
indemnification.

8. Also, any person forfeiting his office, may take a
new grant thereof, on his taking the oaths, and conform-
ing; provided it be not filled up before. 1 G. 2. c. 13.
f. 14.

Persons disquali-
fied may take a
new grant.

9. In the universities, where persons shall not take the
oaths, or shall not produce a certificate thereof, to be re-
gifted in their proper college, and others be not elected in
their places within 12 months, the king shall appoint and
nominate. 1 G. 2. c. 13. f. 12, 13.

Persons disquali-
fied in the uni-
versities.

10. Persons refusing the oaths, having any office of in-
heritance, may appoint a deputy, so as such deputy be
approved by the king under his privy signet. 1 G. 2.
c. 13. f. 18.

Offices of inheri-
tance may be ex-
ecuted by deputy.

Note,

Office.

Note, The forms of the abovesaid oaths and declarations, are inserted in the title *Oaths*.

III. Duty on the perquisites of offices.

Duty on the perquisites of offices.

1. By the 31 G. 2. c. 22. altered and explained by the 32 G. 2. c. 33. there are certain duties laid upon offices and pensions; and so much of the salaries of such offices, as ariseth from perquisites, is directed to be under the management of the commissioners of the land tax.

Perquisites what.

2. By *perquisites* are meant such profits of offices and employments, as arise from fees established by custom or authority, and payable either by the crown, or the subjects, in consideration of business done in the course of executing such offices and employments. 32 G. 2. c. 33.

General duty on offices and pensions.

3. And there shall be paid yearly, over and above all other duties, 1 s. for every 20 s. of the yearly value of all salaries, fees and perquisites, incident unto or received for or in respect of all offices and employments of profit in Great Britain, and the like sum of 1 s. for every 20 s. of all pensions and other gratuities payable out of any revenue belonging to his majesty in Great Britain, exceeding the value of 100 l. a year. 31 G. 2. c. 22. f. 1.

And a deduction shall be made thereof in the exchequer; or if paid by any person, and not out of the exchequer, then the same shall be paid by such person into the exchequer. 31 G. 2. c. 22. f. 2.

So much thereof as relates to perquisites, to be under the management of the commissioners of the land tax.

4. But where the profits of such offices shall arise, in the whole or in part, from perquisites due and payable in the course of office, and not from salaries, fees, and wages paid by the crown; the same shall be under the management of the commissioners of the land tax, who shall ascertain, according to the valuation of such offices to the land tax, or otherwise according to their best judgment, the sum total of the perquisites arising from such office, distinct from the salary, fees, and wages thereof. 31 G. 2. c. 22. f. 3, 5, 6. 32 G. 2. c. 33. f. 5.

Manner of laying the assessment.

5. In order whereunto the commissioners shall meet at the most common places of meeting, yearly on or before July 3d, and afterwards as often as shall be necessary; and may subdivide; and any two or more of them, at such general meeting, or within 8 days after, shall set down in writing, in a rate to be by them prepared for that purpose, the amount of the said duty of 1 s. in the pound, to be paid

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paid by all officers, their clerks, or agents, exercising any of the said employments, the salary, wages, fees, and perquisites whereof exceed the value of 100l. a year. 31 G. 2. c. 22. f. 6.

And for the better ascertaining thereof, the receiver to be appointed by his majesty for these duties shall transmit to the commissioners of the land tax in every district where any office is to be assessed, an account of all such offices whereof the salaries, fees and wages do not exceed 100l. a year; and if the commissioners shall find that the perquisites arising from such office, together with the salary, fees, and wages thereof as certified by the receiver, do exceed together the amount of 100l. a year, they shall assess such office, and cause the duty of 1s. a pound to be levied and collected thereon. 32 G. 2. c. 33. f. 6.

And where any person shall have two or more offices in any part of *Great Britain*, the salary and perquisites whereof together exceed 100l. a year; such person shall pay 1s. in the pound for the profits of such offices, notwithstanding the salary and perquisites of no one of the said offices are of the value of 100l. a year. 31 G. 2. c. 22. f. 23.

And deputies shall be liable to pay for their principals, and deduct the same out of the profits of their office. f. 27.

6. Provided, that nothing herein shall extend to the pay Exemptions. of commission or non-commission officers or private men serving in the navy or army. f. 24.

Nor to the pay of any military officers serving on the staff, or belonging to any of his majesty's garrisons, regiments, troops, companies, *Chelsea hospital*, or the hospitals of the army. 32 G. 2. c. 33. f. 11.

Nor to such pensions or gratuities as the king shall declare in the warrant directing the payment thereof, to be intended as charitable donations. 32 G. 2. c. 33. f. 10.

Nor to any pension, annuity, rent, or sum charged upon the revenue by any of the king's predecessors, or by act of parliament, granted to any person in fee or fee tail, or till redeemed by payment of any sum mentioned in any grant or act of parliament. f. 12.

Nor shall any thing in the said act of the 32 G. 2. extend to charge any offices or employments in either of the two universities, with the duty by the said act of 32 G. 2. imposed. f. 13.

Signing the assessment.

7. And the said commissioners, or any three of them, shall within the time above limited sign and seal two duplicates of the said rates, and cause one of them to be delivered to the collectors of the land tax for each place respectively, or to such other two honest and responsible persons as they shall at their discretion appoint to be collectors thereof; with warrant to collect. 31 G. 2. c. 22. f. 6.

Appeal.

8. Persons thinking themselves aggrieved by being *over-rated*, may appeal to the barons of the exchequer; and the said barons, or one of them, shall hear and determine all such appeals, on or before the last day of *Michaelmas* term yearly.—Persons charged may inspect the rates in the day time; without fee.—Notice of appeal, to be given in writing to a collector. 31 G. 2. c. 22. f. 6.

And if any dispute shall arise, whether the fees, salary, or wages of any office or employment, or whether any pension or gratuity, be *chargeable*, or touching the sum which ought to be stopped and deducted thereout; the same shall be heard by the barons of the exchequer, on complaint or representation laid in writing before them, either by the party grieved, or by the receiver. And the complainant shall give a copy of his complaint to the person against whom the same is made, within ten days after it shall have been lodged with the barons, and they shall hear and determine such dispute in a summary way, and their determination shall be final. 33 G. 2. c. 33. f. 3, 4.

Duplicates to be transmitted.

9. The commissioners shall cause to be delivered a duplicate in parchment, under their hands and seals, containing the whole sum rated within each parish or place, to the said receiver; and another, into the remembrancer's office in the exchequer; on or before the first day of *Hilary* term, or within 20 days after (all appeals being first determined). 31 G. 2. c. 22. f. 6.

Collecting.

10. And the said duty shall be collected (where it is not herein otherwise directed) in all respects as the land tax for the year 1758. 31 G. 2. c. 22. f. 7.

And in all cases where any fees, salaries, wages, or other allowances or profits on any office, shall be payable at the receipt of the exchequer, or by the cofferer of his majesty's household, or out of any other publick office, or by any of his majesty's receivers or paymasters; the duty, in case of non-payment, may be stopped there. f. 26.

11. And

11. And the payment of the said sums collected shall be paid to the receiver, in the course of the quarter where- Collector paying to the receiver.
in the same shall have been deducted; who shall give re-
ceipts for the same. 31 G. 2. c. 22. f. 12. 32 G. 2
c. 33. f. 1.

12. And the receiver shall, within the next quarter, Receiver paying into the exchequer.
pay the same into the exchequer. 32 G. 2. c. 33. f. 1.

Orchards. See **Wood**.

Overseers of the poor. See **Poor**.

Outlawry. See **Process**.

Pamphlets. See **Stamps**.

Paper. See **Cerise**.

Papists. See **Papery**.

Parchment. See **Stamps**.

Pardon.

1. A Pardon is a work of mercy, whereby the king Pardon, what.
either before the attainder, sentence or conviction, or after, forgiveth any crime, offence, punishment,
execution, right, title, debt, or duty, temporal or eccle-
siastical. 3 *Inst.* 233.

2. Pardons are either *general* or *special*: *General*, are General pardon.
by act of parliament; of which, if they are without ex-
ceptions, the court must take notice *ex officio*; but if
there are exceptions therein, the party must aver that he
is none of the persons excepted. 3 *Inst.* 233. *Hale's*
Pl. 252.

By the act of 20 G. 2. c. 52. for the king's general par-
don; All persons are pardoned and discharged from all
treasons, misprisions of treasons, felonies, treasonable and
seditious words and libels, leasing making, misprisions of
felony, offences whereby any person may be charged with
the penalty of *præmunire*, riots, routs, offences, con-
tempt, trespasses, entries, wrongs, deceits, misdemeanors,
forfeitures, penalties, sums of money, pains of death, pains
corporal

corporal, and pains pecuniary, and generally from all other things, causes, quarrels, suits, judgments, and executions not by this act excepted, which can by the king be pardoned, and which were done or incurred before June 15. 1747.—Excepted, persons in the service of the pretender, or of *France* or *Spain*; forging the king's seal; coining; violating the privileges of ambassadors; murders; petty treasons; poisonings; burning of houses, corn, hay, straw, wood; shooting at any person; sending threatening letters; piracy; destroying ships; offences in the navy or army; burglary; sacrileg; robbery; sodomy; buggery; rape; perjury; subornation; forgery; felony in cases of bankruptcy; destroying banks of rivers and sea banks; firing coal pits; offences against the excise, customs, land tax, post office, stamp duties, duty on houses and windows, wool, importing or exporting goods; offences concerning highways or bridges; imbeziling goods, and warlike stores of the crown; titles of quare impedit; incest; simony; dilapidations; first fruits; tenths; money due to the king from publick officers on account; persons transported; offences by pay-piffs; contempts in causes for non-performance of awards, or non-payment of costs; contempts in ecclesiastical courts, in causes commenced for matters of right only, and not for correction; contempts in courts of admiralty proceeding civilly, and not criminally; and excepted, several persons by name.

And the like, for the most part, hath been enacted by former statutes of general pardon.

Special pardon.

3. *Special* pardons, are either of *course*, as to persons convicted of manslaughter, or *se defendendo*, and by divers statutes to those who shall discover their accomplices in several felonies; or, of *grace*, which are by the king's charter, of which the court cannot take notice *ex officio*, but they must be pleaded. 3 *Inst.* 233.

Pardon to contain the suggestion.

4. By the 27 *Ed.* 3. c. 2. In every charter of the pardon of felony, the suggestion, and the name of him that maketh the suggestion, shall be comprized; and if it be found untrue, the charter shall be disallowed.

Pardon to specify the offence.

5. And by the 13 *R.* 2. *st.* 2. c. 1. No charter of pardon shall be allowed for murder, treason, or rape, unless the offence be specified therein.

Lord Coke says, the intention of this act was not, that the king should grant a pardon of murder by express name in the charter, but because the whole parliament conceived that

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that he would never pardon murder by special name. And he says, he hath never seen any pardon of murder by any king of *England*, by exprefs name. 2 *Inst.* 233, 236.

6. The king cannot pardon an offence before it is committed; but such pardon is void. 2 *Haw.* 389. The king cannot pardon an offence before it is committed.

7. As the release of the party will not bar an indictment at the suit of the king; so neither will a pardon by the king be any bar to an appeal at the suit of the party. Cannot pardon an appeal.

2 *Haw.* 392.

8. And in some cases even where the king is sole party, some things there are which he cannot pardon; as for example, for all common nuisances, as for not repairing of bridges or highways, the suit (for avoiding multiplicity of suits) is given to the king only, for redress and reformation thereof; but the king cannot pardon or discharge either the nuisance, or the suit for the same; because such pardon would take away the only means of compelling a redress of it. But it hath been holden by some, that a pardon of such offence will save the party from any fine, for the time precedent to the pardon. 3 *Inst.* 237.

2 *Haw.* 391.

9. Thus also, if one be bound by recognizance to the king, to keep the peace against another by name, and generally all other lieges of the king; in this case, before the peace be broken, the king cannot pardon or release the recognizance, altho' it be made only to him, because it is for the benefit and safety of his subjects. 3 *Inst.* 238. Cannot discharge a recognizance.

10. Likewise, after an action popular is brought, as well for the king as for the informer, according to any statute, the king can but discharge his own part, and cannot discharge the informer's part; because by bringing of the action the informer hath an interest therein: but before the action brought, the king may discharge the whole (unless it be provided to the contrary by the act) because the informer cannot bring an action or information originally for his part only, but must pursue the statute. And if the action be given to the party grieved, the king cannot discharge the same. 3 *Inst.* 231. Cannot release an information qui tam.

11. It seems to have been always agreed, that the king's pardon will discharge any suit in the spiritual court *ex officio*: Also it seems to be settled at this day, that it will discharge any suit in such court at the instance of the party, for the reformation of manners, or welfare of the soul, as

May discharge a suit in the spiritual court.

for defamation, or laying violent hands on a clerk, and such like; for such suits are in truth the suits of the king, though prosecuted by the party. Also, it seems to be agreed, that if the time to which such pardon hath relation, be prior to the award of costs to the party, it shall discharge them: And it seems to be the general tenor of the books, that tho' it be subsequent to the award of the costs, yet if it be prior to the taxation of them, it shall discharge them; because nothing appears in certain to be due for costs before they are taxed. 1 *Haw.* 394.

But it seems agreed, that a pardon shall not discharge a suit in the spiritual court, any more than in a temporal, for a matter of interest or property in the plaintiff; as for tithes, legacies, matrimonial contracts, and such like. 2 *Haw.* 394.

Doth not by releasing a man release his partner.

12. If the king release to a man all debts, this shall not discharge his partner; but otherwise it is in case of a subject, for in that case the release to one dischargeth both. 3 *Inst.* 239.

Person pardoned may be bound to the good behaviour.

13. When a pardon is pleaded by any one for felony, the justices may at their discretion remand him to prison till he enter into recognizance, with two sureties, for his good behaviour, for any time not exceeding seven years. 5 *W. c.* 13.

Pardon doth not restore lands or goods forfeited.

14. It seems to be a settled rule, that no pardon by the king, without express words of restitution, shall divest, either from the king or subject, an interest either in lands, or goods, vested in them, by an attainder or conviction precedent: Yet it seems agreed, that a pardon prior to a conviction, shall prevent any forfeiture either of lands or goods. 2 *Haw.* 396.

Doth not restore the corruption of blood.

15. A pardon after the attainder doth not restore the corruption of blood, for this cannot be restored but by act of parliament. 3 *Inst.* 233.

Doth restore the credit.

But as to issue born after the pardon, it hath the effect of a restitution of blood. 1 *H. H.* 358.

16. It seems to be settled at this day, that the pardon of a treason or felony, even after a conviction or attainder, doth so far clear the party from the infamy and all other consequences of his crime, that he may not only have an action for a scandal, in calling him traitor or felon, after the time of the pardon, but may also be a good witness, notwithstanding the attainder or conviction; because the pardon makes him as it were a new man, and gives him a new capacity and credit. 2 *Haw.* 395.

But

But it seems to be the better opinion, that the pardon of a conviction of *perjury* doth not so restore the party to his credit, as to make him a good witness, because it would be an injury to the people in general, to make them subject to such a person's testimony. 1 *Vent.* 349.

Parliament.

1. BY the 18 G. 2. c. 18. No person shall vote in the election of a knight of the shire, in respect of any lands which have not been assessed to the land tax 12 calendar months next before such election.—And three commissioners of the land tax shall sign and seal a duplicate of the assessments (to be delivered to them by the assessors) after all appeals determined, and deliver the same to the clerk of the peace, to be kept amongst the records, and be inspected by any person at seasonable times (paying 6d. for such inspection), and the clerk of the peace shall give copies to any person paying after the rate of 6d. for every 300 words.

Electors to be assessed to the land tax.

2. By the 2 G. 2. c. 24. which act is required to be read at every *Easter* sessions, the returning officer of a member of the house of commons, shall after reading the writ, and before the election, take the oath against bribery, and that he will make a due return; to be administered by one justice (or in his absence by three of the electors) and entered amongst the records of the sessions.

Election.

And by the 9 *An. c.* 5. The oath of the qualification of a candidate shall be administered by the returning officer, or by two justices; who shall certify the same in three months into the chancery or king's bench, on pain of 100l. And thereupon no fee shall be paid, but 1s. for the oath, 2s. for the certificate, and 2s. for the filing.

And by the 10 *An. c.* 23. The sheriff in 20 days after the election shall deliver the poll books upon oath to the clerk of the peace, to be kept among the records of the sessions; which oath shall be administered by the two next justices (1 *Q.*)

3. By the common law, a member of parliament shall have the privilege of parliament, not only for himself and his servants, to be freed from arrests, subpoena, citation and

Privilege.

and the like; but also for his horses and goods to be free from distresses: but for treason, felony, and breach of the peace, there can be no privilege. 4 *Inst.* 24, 25.

T. 31 G. 2. *Rex v. Earl Ferrers*: A writ of *habeas corpus* having been granted, and served upon the said earl, returnable *immediate*, to bring up the body of his countess, who was sister to Sir *William Meredith*, (to the end that she might have an opportunity to lay her case before the court, and swear the peace if she should think proper, thereby to receive the protection of the court against the said earl); and he the said earl having neglected to return the said writ; Mr. *Norton* and the other counsel for Sir *William Meredith*, on behalf of his sister, intended to have moved for an attachment against the earl for this his disobedience. But some doubts and difficulties having been started by members of both houses, concerning the privilege of peerage, and whether the court of king's bench could issue an attachment against a peer during the sitting of parliament, and execute it upon him, only for a contempt to their court; Sir *William* judged it prudent to petition the house of lords, for their leave to proceed against the earl, and accordingly (by the hands of the earl of *Westmorland*) delivered a petition, stating the facts. Lord *Delaware* opposed it; and said, it was too summary and hasty a method of determining upon their privileges; and proposed referring the matter to a committee, and summoning Lord *Ferrers* to answer it in his place: And to obviate the objections, which might be made to this method, on account of the delay; he offered some schemes for the intermediate safety of the countess. But lord *Mansfield* answered him, and spoke in support of the jurisdiction of his court, and the unreasonableness, injustice, and inconvenience of allowing such a privilege, in criminal cases and breaches of the peace. The duke of *Argyle* spoke to the like effect, and expressed a surprize that there should be any doubt about it; the reason of the thing being so clear and plain. Lastly, the earl of *Hardwicke* spoke strongly and particularly in support of the same doctrine, and adduced many instances and precedents in proof of his positions; and concluded with proposing, that to put an end to all doubt about it for the future, the lords should come to a resolution; and accordingly they did come to the following resolution or declaration, and ordered it to be entred on their journal, viz. "7 Febr. 1757, It is ordered and declared, that no
" peer or lord of parliament hath privilege against being
" compelled

“ compelled by process of the courts of *Westminster* hall,
 “ to pay obedience to a writ of *habeas corpus* directed to
 “ him.” *Burrow, Mansfield.* 631.

And by the 12 & 13 *W. c. 3.* and 11 *G. 2. c. 24.*
 Actions may be commenced and proceeded on, against
 peers or members of parliament, immediately after any
 dissolution, or prorogation for above 14 days, until they
 meet again.—Allowing nevertheless a reasonable time for
 their return from parliament; for their privilege existeth,
 not only during the time of their sitting, but for a reason-
 able time both before and after, for their going and re-
 turning. *Str.* 985. *Col. Pitt's* case.

But by a resolution of the house of commons, *Mar.*
 23. 1696, it is declared, that no member of that house
 hath any privilege against payment of any aids, sup-
 plies, or taxes granted to his majesty, or any parish
 duties.

And finally, by the 10 *G. 3. c. 50.* Any person may
 commence and prosecute any action or suit in any court
 of record, or court of equity, or of admiralty, or (in
 causes matrimonial and testamentary) in any court ha-
 ving cognizance of causes matrimonial and testamentary,
 against any peer or lord of parliament or member of the
 house of commons, or any of their menial or other ser-
 vants, or any other person intitled to privilege of parlia-
 ment; and no proceedings thereupon shall be delayed under
 colour of such privilege. Provided, that this shall not ex-
 tend to subject the person of any member of the house of
 commons to be arrested or imprisoned on such suit. And
 to remedy the dilatoriness by process of *Distringas*, the
 court out of which the writ proceeds may order the issues
 to be sold, and the money arising thereby to be applied to
 pay such costs to the plaintiff as the court shall think just,
 and the surplus to be retained till the defendant shall have
 appeared, or other purpose of the writ be answered. And
 obedience may be enforced to any rule of the courts of king's
 bench, common pleas, or exchequer, against any person
 intitled to the privilege of parliament, by distress infinite,
 if the person intitled to the benefit of such rule shall chuse
 to proceed in that way.

4. If at any time in case of invasion, or upon immi-
 nent danger thereof, or in case of rebellion, the parlia-
 ment shall happen to be separated by such adjournment or
 prorogation, as will not expire within 14 days; it shall
 be lawful for his majesty to issue a proclamation for the
 meeting of the parliament upon such day as he shall there-
 by

To meet in case
 of invasion.

Parliament.

by appoint, giving 14 days notice of such appointment; and the parliament shall accordingly meet upon such day, and continue to sit and act as if it had stood adjourned or prorogued to the same day. 2 *G.* 3. *c.* 20. *f.* 117.

In case of the
king's death or
demise.

5. By the 7 & 8 *W.* *c.* 15. The parliament shall not be dissolved by the king's death or demise, but shall continue to sit and act for six months, unless sooner dissolved by the successor: and if there be no parliament; the next preceding parliament shall meet and act, as if they had not been dissolved.

Partition.

By the 8 & 9 *W.* *c.* 31. intituled, An act for the easier obtaining partitions of lands in coparcenary, joint-tenancy and tenancy in common, it is enacted, that if the high sheriff cannot conveniently be present at the execution of any judgment in partition, in such case the under sheriff in presence of two justices may proceed to execution of the writ of partition.

Partridge. See **Game**.

Pawning of goods. See **Cheat**.

Peace. See **Surety**.

Pedlars. See **Hawkers**.

Peers.

Not conservators
of the peace.

Sureties of the
peace against
them.

Trial of peers.

1. **D**UKES, earls, and barons are not conservators of the peace at common law; and have no more power as such, than mere private persons. 2 *Haw.* 32.

2. The safest way of proceeding against a peer, for sureties of the peace or good behaviour, is by complaint to the court of chancery or king's bench. 1 *Haw.* 127.

3. A nobleman must be tried by his peers: but this is to be understood only at the suit of the king, upon an indictment of high treason, petit treason, felony, or imprisonment.

prison thereof; but in case of a præmunire, riot, or the like, and generally for all other crimes out of parliament, (unless otherwise specially provided for by statute, as it is in many instances), tho' it be at the suit of the king, he shall not be tried by his peers, but by the freeholders of the county. 3 *Inst.* 30. 2 *Haw.* 424.

4. Process of outlawry lies against a peer, if he be indicted, and appears not, and cannot be taken; otherwise he might take advantage of his own contumacy. 3 *Inst.* 31. Whether they may be outlawed.

5. Peers shall have the benefit of clergy for the first offence of felony, without burning in the hand. 1 *Ed.* 6. c. 12. f. 14. Whether they shall be burnt in the hand.

6. A peer produced as a witness ought to be sworn. Evidence. 3 *Keb.* 631.

Perry. See *Excise*.

Perjury and subornation.

I. Of perjury and subornation by the common law.

II. Of perjury and subornation by the statute of the 5 *El.*

III. Of matters common to them both.

I. Of perjury and subornation by the common law.

1. **P**ERJURY by the common law seemeth to be a wilful false oath, by one who being lawfully required to depose the truth in any judicial proceeding, swears absolutely, in a matter material to the point in question, whether he be believed or not. 1 *Haw.* 172. 3 *Inst.* 164. Perjury at the common law.

Wilful] The false oath alledged against him, should be proved to be taken with some degree of deliberation; for if upon the whole circumstances of the case it shall appear probable, that it was owing rather to the weakness than perverseness of the party, as where it was occasioned by surprize, or inadvertency, or a mistake of the true state of the question, it cannot but be hard to make it amount to voluntary and corrupt perjury. 1 *Haw.* 172.

Falfe]

Perjury and Subornation.

Falſe] It is ſaid not to be material, whether the fact which is ſworn, be in itſelf true or falſe; for however the thing ſworn may happen to prove agreeable to the truth, yet if it were not known to be ſo by him who ſwears to it, his offence is altogether as great as if it had been falſe, inasmuch as he wilfully ſwears that he knows a thing to be true, which at the ſame time he knows nothing of, and impudently endeavours to induce thoſe before whom he ſwears, to proceed upon the credit of a depoſition, which any ſtranger might make as well as he. 1 *Haw.* 175.

Being lawfully required] It ſeemeth clear, that no oath whatſoever, taken before perſons acting merely in a private capacity; or before thoſe who take upon them to adminiſter oaths of a publick nature, without legal authority; or before thoſe who are legally authorized to adminiſter ſome kinds of oaths, but not thoſe which happen to be taken before them; or even before thoſe who take upon them to adminiſter juſtice by virtue of an authority ſeemingly colourable, but in truth unwarranted and merely void, — can amount to perjuries, but are altogether idle and of no force. 1 *Haw.* 174.

In any judicial proceeding] For tho' an oath be given by him that hath lawful authority, and the ſame is broken, yet if it be not in a judicial proceeding, it is not perjury, becauſe ſuch oaths are general and extrajudicial; but it ſerves for aggravation of the offence. Such are, general oaths given to officers or miniſters of juſtice, the oath of fealty and allegiance, and ſuch like. Thus if an officer commit extortion, it is againſt his general oath, but yet not perjury, becauſe not in a judicial proceeding; but when he is charged with extortion, the breach of his oath may ſerve for aggravation. 3 *Inſt.* 166.

If a perſon calleth another *perjured* man, he may have his action upon his caſe, becauſe it muſt be intended contrary to his oath in a judicial proceeding; but for calling him a *forſworn* man, no action doth lie, becauſe the forſwearing may be extrajudicial. 3 *Inſt.* 166.

Swears abſolutely] For the depoſition muſt be direct and abſolute; and not, as he thinketh, or remembreth, or believeth, or the like. 3 *Inſt.* 166.

In a matter material to the point in queſtion] For if it be not material, then tho' it be falſe, yet it is no perjury, becauſe
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Perjury and Subornation.

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it concerneth not the point in issue, and therefore in effect it is extrajudicial. 3 *Inst.* 167.

But it is not necessary that it appear to *what degree*, the point in which a man is perjured, was material to the issue; for if it is but circumstantially material, it will be perjury. *L. Raym.* 258.

Much less is it necessary that the evidence be sufficient for the plaintiff to recover upon; for in the nature of the thing, an evidence may be very material, and yet it may not be full enough to prove directly the point in question. *L. Raym.* 889.

Whether he be believed or not] It hath been holden, not to be material upon an indictment of perjury at common law, whether the false oath were at all credited, or whether the party in whose prejudice it was intended, were in the event any way aggrieved by it or not; inasmuch as this is not a prosecution grounded on the damage of the party, but on the abuse of publick justice. 1 *Haw.* 177.

2. Subornation of perjury, by the common law, seems to be an offence, in procuring a man to take a false oath, amounting to perjury, who actually taketh such oath. 1 *Haw.* 177.

Subornation at common law.

But it seemeth clear, that if the person incited to take such an oath, do not actually take it, the person by whom he was so incited is not guilty of subornation of perjury; yet it is certain, that he is liable to be punished, not only by fine, but also by infamous corporal punishment. *id.*

3. The punishment of perjury, and subornation of perjury by the common law, is restrained by the statute of the 5 *El.* hereafter following; that it shall not be less than is inflicted by that statute.

Punishment of perjury and subornation by the common law.

4. Mr. *Hawkins* says, it hath been of late settled, that justices of the peace have no jurisdiction over perjury at the common law; the principal reason of which resolution, he says, as he apprehended, was, that inasmuch as the chief end of the institution of the office of these justices was, for the preservation of the peace against personal wrongs and open violence, and the word *trespass* (in the commission) in its most proper and natural sense, is taken for such kind of injuries, it shall be understood in that sense only, or at the most to extend to such other offences only, as have a direct and immediate tendency to cause such breaches of the peace: as libels and such like, which on this account

Power of justices of the peace therein.

Perjury and subornation.

count have been adjudged indictable before justices of the peace. 2 *Haw.* 40.

And in the case of *K. and Bainton, E. 11 G. 2.* An indictment at the quarter sessions for perjury at the common law, was quashed for want of jurisdiction; and was said to have been done so about three years before, in the case of *K. and Westines.* Str. 1088.

II. Of perjury and subornation by the statute of the 5 El.

Perjury and subornation on the 5 El. c. 9.

And to subornation of perjury, in the first place, *Every person who shall unlawfully and corruptly procure any witness to commit any wilful and corrupt perjury, in any matter or cause depending in suit and variance, by any writ, action, bill, complaint, or information, touching any lands, tenements, or hereditaments, or any goods, chattels, debts, or damages; in chancery, or in any court of record, leet, ancient demesne court, hundred court, court baron, or court of stannery; or shall unlawfully and corruptly procure or suborn any witness which shall be sworn to testify in perpetuam rei memoriam,—shall forfeit 40 l. half to the king, and half to the party grieved who shall sue for the same. And if he has not lands or goods worth 40 l. he shall be imprisoned half a year, and stand on the pillory one whole hour in some market town next adjoining to the place where the offence was committed, in open market there, or in the market town itself where the offence was committed. And he shall be disabled to be a witness in any court of record.*

And as to perjury, *If any person either by subornation or otherwise, shall wilfully and corruptly commit any wilful perjury, by his deposition in any of the courts before mentioned, or being examined ad perpetuam rei memoriam; he shall forfeit 20 l. in like manner, and be imprisoned six months; and if he has not goods worth 20 l. he shall be set on the pillory in some market place within the shire, city, or borough where the offence was committed, by the sheriff or head officer respectively, and have both his ears nailed. And he shall be for ever disabled to be a witness in any court of record.*

And the judge of the court where the perjury shall be, and the judges of assize; and justices of the peace in sessions, may inquire, hear, and determine thereof, by inquisition, presentment, bill, or information, or otherwise.

But this act shall not extend to any ecclesiastical court.

Also this statute shall not restrain the authority of any judge, having absolute power to punish perjury before the making thereof,

but that every such judge may proceed in the punishment of all offences punishable before the making of the said statute, in such wise as they might have done, and used to do, to all purposes, so that they set not upon the offender less punishment than is contained in the said statute. 5 El. c. 9.

Any witness] If the defendant perjureth himself in his answer, in the chancery, exchequer chamber, or the like, he is not punishable by this statute; for it extendeth but to witnesses. 3 Inst. 166.

But he is punishable for the same by indictment at the common law. *Bur. Mansf.* 1189.

By any writ, action, bill, complaint, or information] It hath been resolved, that these words are to be extended to the latter clause concerning perjury, as well as to this concerning subornation; because it cannot well be intended, that the makers of the act, who inflict a greater penalty on subornation of perjury, than on the perjury itself, should mean to extend the purview of the law in relation to what they esteemed the lesser crime, farther than in relation to that which they esteemed the greater. 1 *Haw.* 179. 5. Co. 99.

But it is to be observed, that perjury or subornation in an action depending by *indictment*, are not within this statute; but only in an action depending by *writ, action, bill, complaint, or information*. 3 Inst. 164.

Half to the party grieved] It hath been collected from this clause, that no false oath is within the meaning of this statute, which doth not give some person a just cause of complaint: And upon this ground it hath been said, that he who swears a thing which is true, but not known by him to be so, is not within this statute; because howsoever heinous his offence may be in its own nature, yet when it proves in the event to be in maintenance of the truth, it cannot be said to give him a just cause of complaint, who would take advantage against another from his want of legal evidence to make out the justice of his cause. Also from the same ground it seemeth clearly to follow, that no false oath can be within the statute, unless the party against whom it was sworn suffered some kind of disadvantage by it; for otherwise it cannot be said, that any one was grieved by it: And therefore that in every prosecution upon this statute, it must appear upon the trial, that there was such a suit depending, wherein the party

Perjury and subornation.

party might be prejudiced in the manner supposed. 1 Haw. 181.

Either by subornation or otherwise] It is not necessary to set forth in the indictment, whether the party took the false oath thro' the subornation of another, or without any such subornation, these words being only superfluity. 1 Haw. 179.

Wilfully and corruptly] These words are necessary in an indictment or action on this statute, and cannot be supplied by adding *against the form of the statute*, or by concluding *and so a wilful and corrupt perjury did commit*. 1 Haw. 178.

Justices in sessions] And one justice (Mr. Dalton says) may bind the offender over to the sessions. Dalt. c. 70.

But because the prosecution upon this statute is more difficult than by indictment at the common law, offenders are seldom prosecuted upon this statute, especially at the sessions; and it seems generally the safer way to proceed by indictment at the common law, at the assizes, or in the court of king's bench.

Shall not restrain] From this it seemeth undoubtedly to follow, that the court of king's bench, &c. proceeding upon an indictment or information of perjury or subornation of perjury at the common law, may not only set a discretionary fine on the offender, but also condemn him to the pillory, without making any inquiry concerning the value of his lands or goods. 1 Haw. 178.

III. Of matters common to them both.

Judges may direct prosecution for perjury.

1. The judge of assize (sitting the court, or within 24 hours after) may direct any witness, if there shall appear to him a reasonable cause, to be prosecuted for perjury; and may assign the party injured, or other person undertaking such prosecution, counsel, who are to do their duty *gratis*: And such prosecution so directed shall be carried on without any duty or fees whatsoever. And the clerk of assize, or other proper officer of the court, shall give *gratis* to the party injured, or prosecutor, a certificate of the same being directed, together with the names of the counsel assigned him: Which certificate shall be sufficient proof of such prosecution being directed; provided that no such direction or certificate shall be given in evidence on the trial. 23 G. 2. c. 11. s. 3.

2. And

2. And in every information or indictment for wilful and corrupt *perjury*, it shall be sufficient to set forth the substance of the offence, and by what court, or before whom the oath was taken (averring such court or person to have a competent authority to administer the same) together with the proper averment or averments to falsify the matter wherein the perjury is assigned, without setting forth any part of the record or proceedings either in law or equity (other than as aforesaid,) or the authority of the court or person before whom the perjury was committed.

On prosecution for perjury, it shall be sufficient to set forth the substance of the offence.

23 G. 2. c. 11. s. 1.

3. And in informations or indictments for *subornation* of perjury, or for corrupt bargaining or contracting with others to commit wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence, without setting forth any part of the record or proceedings, or the commission or authority of the court or person before whom the perjury was committed, or was agreed or promised to be committed. 23 G. 2. c. 11. s. 2.

Likewise on a prosecution for subornation.

4. The court generally will not quash an indictment for a crime of so enormous a nature as perjury, for insufficiency in the caption or body of it, but will oblige the defendant either to plead or demur to it. 2 Haw. 258.

Insufficient indictment not quashed without pleading or demur.

5. To convict a man of perjury, a probable evidence is not enough; but it must be a strong and clear evidence, and the witnesses must be more numerous than those on the side of the defendant, for otherwise it is only oath against oath. 10 Mod. 194.

Evidence.

And the party prejudiced by the perjury, shall not be admitted to prove the perjury. L. Raym. 396.

6. And for a further punishment of perjury or subornation of perjury, it is enacted by the 2 G. 2. c. 25. (which act is made perpetual by the 9 G. 2. c. 18.) that besides the punishment already inflicted, the judge may order the offender to be sent to the house of correction, not exceeding 7 years, to be kept to hard labour; or otherwise to be transported for any term not exceeding 7 years.

Further punishment of perjury or subornation.

7. It seems that the court will not ordinarily at the prayer of the defendant grant a certiorari for the removal of an indictment of perjury; for such crime deserves all possible discountenance, and the certiorari might delay, if not wholly discourage the prosecution. 2 Haw. 287.

Certiorari.

8. A person convicted of perjury is disabled from being a juror. 2 Haw. 417. Or a witness. 2 Haw. 433.

Perjured person not to be a juror, or witness.

Quakers.

9. Quakers making solemn affirmation wilfully and corruptly, shall suffer as in cases of perjury. 8 G. c. 6. f. 2.

Petition.

BY the 13 C. 2. c. 5. No person shall solicit above 20 hands, to any petition to the king, or either house of parliament, for alteration of matters established by law in church or state, unless the matter thereof hath been consented to by three or more justices of the county, or by the major part of the grand jury at the assizes or sessions; nor shall present any such petition accompanied with more than ten persons, on pain of a sum not exceeding 100*l.* and three months imprisonment, on conviction at the assizes or sessions in six months, and proved by two witnesses.

But this shall not extend to debar any persons (not above ten in number), to present any complaint to any member of parliament after his election, and during the continuance of parliament, or to the king, for any remedy to be thereupon had; nor to any address to the king by the parliament.

Petit larceny. See **Larceny**.

Petit treason. See **Treason**.

Pewter and other metal.

Imported.

1. **N**O person shall buy, or take by exchange, (or otherwise take into or within this realm to the intent to sell the same, 33 H. 8. c. 4. f. 7.) any wares made out of the realm, of tin or mixed with tin, as dishes, sawcers, flagons, spoons, or any other thing made of tin or pewter; on pain of forfeiting the same, and the value thereof, half to the king, and half to the finder. 25 H. 8. c. 9. f. 1.

And the master and wardens of the pewterers, and where there are none, the head officer of the town may appoint searchers, who may seize the same. *f. 2.*

And persons interrupting or disturbing the said seizure shall forfeit 5 l. half to the king, and half to him that shall sue. *33 H. 8. c. 4. f. 8.*

2. No person shall cast or work any pewter vessel or brass, but that it be as good fine metal as the pewter and brass wrought in *London*, and as by the statutes of the same ought to be; on pain of forfeiting the same, half to the king and half to the finder. But this not to extend to brass or pewter in the possession of any person, other than the worker, or such as have the same to sell, and being of the crafts or misteries. *19 H. 7. c. 6.*

And no person shall make any hollow wares of pewter, to wit, salts and pots made of pewter called ley-metal, but after the assize of pewter and ley-metal within *London*; and the makers shall mark them with their own mark, that they may avow the same by them wrought; and the same not sufficiently made and wrought, and not marked, found in the possession of the maker or seller, shall be forfeited; and if the same be sold, the maker shall forfeit the value thereof, half to the king, and half to the finder or searcher. *id.*

And the master and wardens of the craft of pewterers, and where there are none such, the head and governors of the city or borough, may appoint searchers; and the justices at *Michaelmas* sessions shall appoint two persons, having experience therein, to search within the county. And of all such unlawful pewter or brass as they shall find, half shall be to the king, and half to the searchers. *id.*

And in default of the master and wardens not searching, any person having sufficient knowledge in the said occupation, by oversight of the mayor or other head officer of cities or boroughs may search. *id.*

3. If any untrue metal or workmanship of tin or pewter be found in any wares brought to be sold, the mayor of *London*, and the master and wardens of the pewterers, may search the same in the said city; and in all other cities and towns where there are wardens, the mayors and wardens shall have like authority; and where there are no wardens, then the head officers of cities or towns shall appoint searchers; and if such new wares wrought of tin and pewter be found defective, and in the possession of the seller, the person putting them to sale shall forfeit the

Pewter and other metals.

same, half to the king, and half to the searcher or finder.
4 *H. 8. c. 7. f. 7.*

Selling, where.

4. No person using the crafts of pewterer and brazier, shall sell or change any pewter or brass, at any place; but only in open fair or market, or in his own dwelling house, except he be desired by the buyer of such ware; on pain of 10*l.* half to the king, and half to him who shall seize or sue. 19 *H. 7. c. 6.* 25 *H. 8. c. 9. f. 6.*

False weights.

5. Persons using the buying and selling of pewter, or brass, who shall occupy any false beams or weights, and every person using the same, shall forfeit 20*s.* half to the king, and half to him that shall sue; and also the beams to him that shall seize them. 19 *H. 7. c. 6.*

And if the offender be not sufficient to pay the forfeiture, the mayor, or other head officer, where he shall be found, shall put him in the stocks, and so keep him till the next market day next adjoining, and in the market place put him in the pillory all the market time. *id.*

Exporting.

6. No person shall carry over sea, any brass, copper, latten, bell metal, pan metal, gun metal, nor shroff metal, whether it be clean or mixed (tin and lead only excepted); on pain of forfeiting double the value thereof (and 10*l.* for every thousand weight, 2 & 3 *Ed. 6. c. 37.*) half to the king, and half to him that shall sue. 33 *H. 8. c. 7.*

Pheasants. See Game.

Physicians.

Recusants not to practise physick.

1. NO recusant convict shall practise physick, nor use the trade of an apothecary, on pain of 100*l.* 3 *f. c. 5. f. 8.*

Apothecary exempted from offices.

2. Apothecaries within London and seven miles thereof, and also apothecaries in any other place who have served seven years apprenticeship, shall be exempted from the office of constable, scavenger, overseer of the poor, and all other parish, ward, and leet offices, and from being put on any jury or inquest. 6 *W. c. 4.*

Surgeons exempted from offices.

3. By the 5 *H. 8. c. 6.* Surgeons shall be discharged of the constableship, watch, and all manner of office bearing any

any armour, and also of all inquests and juries *within London.*

And by the 18 G. 2. c. 15. All freemen of the surgeons company in *London*, shall be exempted from the office of constable, scavenger, overseer of the poor, and other parish, ward, and leet offices, and from serving on juries and inquests. *f. 10.*

And Mr. *Hawkins*, speaking of the former of these statutes, says, it seems that by the equity thereof, and the ancient custom of the realm, *all* surgeons have been allowed the like privilege; that is, whether in *London* or elsewhere. 2 *Haw.* 64.

4. By the 32 H. 8. c. 40. The president of the commonalty and fellowship of the faculty of physick in *London*, and the commons and fellows of the same, shall be discharged of watch and ward there, and shall not be chosen constable, or any other officer. *f. 1.* Physicians exempted from offices.

Yet it seems to have been holden, that the equity of this act, doth not extend to other physicians not mentioned in it; perhaps for this reason, because physicians have no such special custom for their discharge, as surgeons are said to have. 2 *Haw.* 64.

And it seemeth that a practising physician, being chosen constable in pursuance of a custom in respect of his lands in a town, has no remedy for his discharge; for that there are no precedents of this kind, and his calling is private; yet if he be chosen constable of a town, which hath sufficient persons besides to execute this office, and no special custom concerning it, perhaps he may be relieved by the king's bench. 2 *Haw.* 63.

5. All justices, mayors, sheriffs, bailiffs, constables, and other officers in *London*, shall assist the president of the college of physicians, and persons by them authorized, in searching for faulty apothecary wares. 1 *Mar. sess.* 2. c. 9. *f. 6.* Searching for

6. If a physician gives a person a potion without any intent of doing him any bodily hurt, but with intent to cure or prevent a disease, and contrary to the expectation of the physician it kills him, this is no homicide; and the like of a surgeon. And I hold their opinion (says lord *Hale*) to be erroneous, that think if he be no licensed surgeon or physician, that occasioned this mischance, that then it is felony; for physick and salves were before licensed physicians and surgeons; and therefore if they be not licensed according to the statute of the 3 H. 8. c. 17. or 14 H. 8. c. 5. they are subject to the penalties in the statutes, Physician killing a patient.

statutes ; but God forbid that any mischance of this kind should make any person not licensed guilty of murder or manslaughter. These opinions therefore may serve to caution ignorant people not to be too busy in this kind in tampering with physick, but are no safe rule for a judge or jury to go by. 1 H. H. 429.

Pick-pocket. See Larceny.

Pigeons. See Game.

Pillory and tumbrel.

Pillory and tumbrel, what.

1. **PILLORY** (in Latin, *collistrigium*, from the persons neck being put between two boards) is a very ancient punishment in this kingdom, and was used heretofore by the Saxons. 3 Inst. 219.

The word *pill* is common to all the *European* languages, and signifies to spoil, plunder, or (as we say) to *pillage*. And *pillory* (which we have immediately from the *French pillieurie*) hath been improperly applied to denote the mode of punishment, whereas it signifies the *offence*, as *pilleur* signifies the offender. *Barringt.* 30.

The *tumbrel* seemeth to have been anciently the same with the *ducking stool*; an engine for the punishment of scolding women, by ducking them over head and ears in water, and especially in muddy or stinking water, according to the etymology of lord *Coke*, who tells us, that the word *tumbrel* signifieth a dung cart. *Lamb.* 61. 3 Inst. 219.

Who shall find them.

2. Every one that hath a leet or market, ought to have a pillory and tumbrel to punish offenders ; and it seems that a leet may be forfeited for not taking care to have a pillory and tumbrel. 3 Inst. 219. 2 Haw. 75.

Infamy of the punishment.

3. They that have been adjudged to the pillory or tumbrel, are so infamous, that they shall not be received to be jurors or witnesses. 3 Inst. 219.

Caution in inflicting it.

4. And for that the judgment to the pillory or tumbrel doth make the delinquent infamous, the justices of the peace should be well advised before they give judgment of any person to the pillory or tumbrel, unless they have good warrant for that judgment therein. Fine and imprisonment,

Pillory and tumbrel.

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ment, for offences fineable by them, is a fair and sure way.

3 *Inst.* 219.

5. But by several statutes the punishment of the pillory Inflicted by several statutes. is specially ordained; as in the case of deer stealers, forestallers, users of false weights, and many others.

Plague.

1. **A**LL vessels, persons, and goods coming from any Quarantine en- place, from whence the king, with the advice of joined. his privy council, shall judge it probable that the infection may be brought, shall be obliged to make their quarantine in such places, for such time, and in such manner as shall be directed by him, or by his order made in council, and notified by proclamation, or published in the gazette. 26 G. 2. c. 6. s. 1.

2. And when the king shall make any orders concerning Orders for quarantine to be read in churches. quarantine, and notify the same by proclamation, or in the gazette, the same shall be publickly read the next *sunday*, and the first *sunday* in every month afterwards (during the time such orders shall continue) immediately after prayers, in all places set apart for divine worship, within such places as shall be specified in such proclamation or orders. *id.* s. 20.

3. And the justices of the counties adjoining, or one of Watchmen to be appointed. them, shall forthwith, when quarantine shall be appointed, cause watches to be kept by day and night, in the most proper and convenient places, within the several adjacent parishes; who shall not permit any person whatsoever to come on shore from, or go on board any ships under quarantine, except only such as shall have the charge of seeing the quarantine duly performed, or as shall be licensed by such person having charge of the quarantine. 9 *An.* c. 2.

And if any superintendant of the quarantine, or watchman, shall neglect his duty, he shall be guilty of felony without benefit of clergy. 26 G. 2. c. 6. s. 17.

4. And if the plague shall appear on board any ship, Masters of ships to give notice. being to the northward of *Cape Finisterre*, the master shall immediately proceed to the harbour of *[St. Helen's Pool]*, between the uninhabited islands of *St. Helen's Tean*, and *North Withell*, or to such other place as his majesty by

advice of his privy council shall appoint; 29 G. 2. c. 8.] where he shall make known his case to some officer of the customs; who shall immediately acquaint some custom-house officer of some near port of *England*; who shall with all possible speed send intelligence thereof to a secretary of state: and the ship shall remain there till his majesty's pleasure be known; nor shall any of the crew go on shore.

But if he shall not be able to make the islands of *Scilly*, or shall be forced by weather or otherwise to go up either of the channels, he shall not enter any port, but remain in some open road, till he receives orders from his majesty or his privy council; and shall prevent any of the crew from going out of the ship, and avoid all intercourse with other ships or persons. And the said master or any other person on board, who shall be disobedient herein, shall be guilty of felony without benefit of clergy; and may be tried where the offence shall be committed, or where he shall be apprehended. 26 G. 2. c. 6. s. 2.

Vessels to be
examined.

5. And when any country or place is infected, or when any order shall be made by the king concerning quarantine, as often as any vessel shall attempt to enter into any port, the principal officer of the customs there, or such person as shall be authorized to see quarantine performed, shall go off, or cause some other person to go off, to such vessel; who shall at a convenient distance, demand of the commander, the name of the ship; the name of the commander; at what place the cargo was taken on board; what place the vessel touched at in her voyage; whether such places, or any, and which, were infected with the plague; how long she hath been in her passage; how many persons were on board when she set sail; whether any, and what persons, during the voyage, have been or are infected; how many died in the voyage, and of what distemper; what vessels he, or any of his company with his privy, went on board, or had any of their company come on board his ship, and to what place they belonged; and also the true contents of his lading, to the best of his knowledge: And if it shall appear on such examination, or otherwise, that any person on board is infected, or that such ship is obliged to perform quarantine; the officers of any of his majesty's ships of war, or of any sorts or garrisons, and all other his majesty's officers whom it may concern, and others whom they shall call to their assistance, shall, on notice thereof, oblige such ship to repair to the place appointed for quarantine, be it by firing of guns, or
other

other force: And if such vessel shall come from any place infected, or have any person on board infected, and the master shall conceal the same, he shall be guilty of felony without benefit of clergy; and if he shall not make a true discovery in any other of the particulars, he shall forfeit 200 l. half to the king, and half to him that shall sue. 26 G. 2. c. 6. f. 3.

And if any officer of the customs, or other officer, shall neglect his duty herein; he shall forfeit his office, and 100 l. in like manner. 26 G. 3. c. 6. f. 11.

7. And the master, after his arrival at the place of quarantine, shall deliver on demand to the chief officer appointed to see quarantine duly performed, such bill of health and manifest as he shall have received from any *British* consul, together with his log-book and journal; on pain of 500 l. in like manner. 26 G. 2. c. 6. f. 4.

8. And all persons, liable to perform quarantine, shall be subject to such orders as they shall receive from the officers authorized to see it performed; who shall have power to enforce obedience, and in case of necessity to call others to their assistance. 26 G. 2. c. 6. f. 9.

9. And any officer of the customs, or others, directed to take care of the quarantine, may seize any boat belonging to such vessel, and detain the same till quarantine be performed. 9 An. c. 2.

10. And if the commander of the ship shall go himself, or permit any seaman or passenger to go on shore, or on board any other vessel, during the quarantine, without licence of the person having charge of the quarantine; the ship and tackle shall be forfeited to the king. 9 An. c. 2.

And if any person shall come on shore, or go aboard any other ship; the persons appointed for seeing quarantine duly performed, may compel him to return and continue during the quarantine: And such person so leaving such ship, and being thereof (after expiration of the quarantine) convicted by oath of one witness, before one justice near, shall forfeit not exceeding 20 l. to be paid immediately to such justice, who may reward the informer thereout not exceeding a third part, and pay the remainder (charges deducted) to the poor of the parish where the conviction shall be; and in default of payment, he may commit him to the house of correction, to be kept to hard labour not exceeding one month. 9 An. c. 2.

And by the 26 G. 2. c. 6. If the master shall quit, or knowingly permit any person to quit the ship, by going on shore, or on board any other vessel, before the quarantine

Officer neglecting.

Master to deliver his credentials.

Obedience enforced.

Ships boats may be seized.

Penalty of quitting the ship.

rentine shall be performed, unless in such cases as shall be permitted by the orders concerning quarantine; or if he shall not, in convenient time after notice, cause the vessel and lading to be conveyed to the place appointed for quarantine, he shall forfeit 500 l. half to the king, and half to him that shall sue: And if any person shall so quit such ship, all persons by any kind of force may compel him to return; and he shall for such offence be imprisoned six months, and forfeit 200 l. half to the king, and half to him that shall sue. *f. 5.*

Persons going
aboard.

11. And if any person shall go on board, and return from any ship, during the quarantine, without such licence; he may be compelled by the persons appointed as aforesaid, to return and continue on board during such quarantine; and the master of such ship shall there keep and maintain him. *9 An. c. 2.*

In what case
small vessels
shall not be al-
lowed to sail.

12. When any part of *Great Britain, Ireland, Guernsey, Jersey, Alderney, Sark, or Man, France, Spain, Portugal,* or the low countries shall be infected, the king by proclamation may prohibit all small boats and vessels under the burden of 20 tons, from sailing out of port, till security be first given by the master, to the satisfaction of the principal officer of the customs, or chief magistrate of the port, by bond to the king with sureties, in the penalty of 300 l. that he shall not go to or touch at any place mentioned in the proclamation; and that the master and every mariner and passenger shall, during the time aforesaid, not go on board any other vessel at sea; and that he shall not permit any person to come on board such boat or vessel at sea; and shall not receive any goods out of any other vessel; for which bond no fee shall be taken. And if such boat or vessel shall sail before such security given, the same, together with the tackle and furniture, shall be forfeited to the king; and the master and every mariner therein, being thereof convicted, on his appearance or default, on oath of one witness, by one justice where the offender shall be found, shall forfeit 20 l. half the informer, and half to the poor of the parish where the offender shall be found, by distress; and for want of sufficient distress to be committed to prison for three months. *26 G. 2. c. 6. f. 19.*

Lazarets to be
appointed.

13. Whenever the king, with the advice and consent of parliament, shall direct lazarets to be provided, for receiving of persons obliged to perform quarantine, or for airing of goods, it shall be lawful to erect the same, either in any waste grounds or commons, or where there are not sufficient,

15.
peace

cient, in the severall grounds of any person whatsoever, not being a house, park, garden, orchard, yard, or planted walk, or avenue to a house, paying for the same as shall be agreed on between the persons interested, and any two persons appointed by the king under his sign manual; and if they cannot agree, then the said two persons shall, 30 days before the sessions, give to the occupier a notice in writing, describing the quantity of ground, and purporting that the consideration for the same will be settled by a jury at such sessions. And the justices there, on proof of such notice shall charge the jury which shall attend there (or some other jury to be then and there impanelled and returned by the sheriff without fee) and cause to be sworn, well and truly to assess the value of such grounds, to whom the parties may have their lawful challenges; and the verdict of the said jury, and the judgment of the justices thereupon shall be conclusive, and finally bind all parties; and thereupon the king shall hold such grounds for such term as he shall judge necessary, paying for the same such rent or other consideration as shall be so assessed. 26 G. 2. c. 6. f. 6.

And the officers authorized to put in execution such orders as aforesaid, shall cause all persons obliged to perform quarantine, and all goods comprized in such orders, to repair or be conveyed to some of the said lazarets, or to such other places as shall be provided according to such orders. *id.* f. 7.

And if any person shall refuse or neglect to repair, within convenient time after notice, to the lazaret or other place appointed, or shall escape or attempt to escape from thence, before quarantine performed; the watchmen, and other persons appointed to see quarantine performed, by force may compel him to repair or return thither: and every person so refusing or neglecting to repair thither, and also every person actually escaping, shall be guilty of felony without benefit of clergy. *id.* f. 8.

14. And if any person not infected, nor liable to perform quarantine, shall enter any lazaret, or other such place, and shall return or attempt to return, unless as permitted by such orders; the watchmen, or other persons appointed, by force may compel him to return and perform quarantine: and if he shall actually escape before he hath performed the same, he shall be guilty of felony without benefit of clergy. *id.* f. 10.

Persons entering lazarets, not to return till quarantine performed.

15. And the mayor, head officers, and justices of the peace of every city, borough, town corporate, and places privileged,

Assessment for relief of persons infected.

privileged, or any two of them, may assess every inhabitant, and all houses of habitation, lands, tenements, and hereditaments, for the reasonable relief of persons infected with the plague, or inhabiting in infected houses, and levy the same by warrant; and if the party to whom the warrant is directed shall not find any goods to levy the same; then upon return thereof, they shall by warrant cause the person to be arrested, and committed to gaol till he shall pay. 17. c. 31. f. 2, 3.

And if the inhabitants of such place shall find themselves unable to relieve all such persons, then on certificate thereof by the said magistrates or two of them, to the justices of the county or near the said city or other place, or to two of them, they may tax the inhabitants of the county within five miles of the place infected, at such weekly sums as they shall think reasonable, to be levied by their warrant by sale of goods, and in default thereof, by imprisonment as aforesaid. *id.* f. 4.

And if the infection shall be in a town where there are no justices, or in a village or hamlet; then two justices of the county may assess the inhabitants of the county, within five miles of the place infected, at such weekly sums as they shall think fit, for the reasonable relief of places infected; to be levied by their warrant by sale of goods, and in default thereof by imprisonment as aforesaid. f. 5.

All which said taxes shall be certified at the next quarter sessions, for such town or county respectively; and there they may order the same to continue, or be enlarged or extended to any other part of the county, or otherwise determined. f. 6.

Officer making default in levying the same, shall forfeit 10s. to be employed to the charitable uses aforesaid. f. 6. But it is not said how this penalty shall be levied.

Searchers for
places infected.

16. And the justices, mayors, and other head officers, may appoint within their limits searchers, watchmen, examiners, keepers, and buriers for the places infected; and give them directions, and swear them for the performance thereof. 17. c. 31. f. 9.

Secreting goods
under quaren-
tine.

17. If any person shall conceal from the officers of quarantine, or convey any letters or goods from any ship under quarantine, or from any lazaret; he shall be guilty of felony without benefit of clergy. 26 G. 2. c. 6. f. 18.

Damaging goods.

18. If any officer or other person shall imbezil or damage any goods performing quarantine, he shall pay treble damages with full costs. 26 G. 2. c. 6. f. 11.

19. After

Plague.

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19. After quarentine performed, and on proof thereof by the oaths of the master and two other persons of the ship, or by the oaths of two credible witnesses before the customer, comptroller, or collector of that or the next port, or their deputies, or a justice near, and that the vessel and every such person are free from infection; and after producing a certificate thereof signed by the chief officer who superintended the quarentine; such officer of the customs, together with the said justice, shall give a certificate thereof (*gratis*), and thereupon the vessel and every such person shall be liable to no farther restraint. 26 G. 2. c. 6. *f.* 13, 14.

Discharge after
quarentine per-
formed.

And all goods liable to quarentine shall be opened and aired, as by such orders shall be directed; and after such order hath been complied with, and a certificate thereof given by the chief officer appointed to superintend the quarentine and airing of such goods, and proof made thereof by the oaths of two witnesses, before the customer, comptroller, or collector of the next port, or any of their deputies, or any justice living near; on certificate and return of such proof by such customhouse officer to the commissioners of the customs, they or two of them by their order shall discharge the same. *f.* 15.

And if any person shall take any fee for such oath, order, or certificate; he shall forfeit 100 l. half to the king, and half to him that shall sue. *f.* 16.

And if any superintendant of the quarentine, or watchman, shall in such case give a false certificate; he shall be guilty of felony without benefit of clergy. *f.* 17.

Note; the abovementioned act of the 9 *An.* was repealed by the 7 G. *f.* 1. c. 3. but was revived by the 8 G. c. 8. which enacts, that neither the said statute of the 7 G. nor any thing therein contained, shall continue in force longer than *Mar.* 25. 1723.

Players.

1. EVERY person who shall for hire, gain, or reward, act, or cause to be acted, any play or other entertainment of the stage, or any part therein, if he shall have no legal settlement where he acts, without authority from the king or the lord chamberlain, shall be deemed

privileged, or any two of them, may assess every inhabitant, and all houses of habitation, lands, tenements, and hereditaments, for the reasonable relief of persons infected with the plague, or inhabiting in infected houses, and levy the same by warrant; and if the party to whom the warrant is directed shall not find any goods to levy the same; then upon return thereof, they shall by warrant cause the person to be arrested, and committed to gaol till he shall pay. 1 *J. c.* 31. *f.* 2, 3.

And if the inhabitants of such place shall find themselves unable to relieve all such persons, then on certificate thereof by the said magistrates or two of them, to the justices of the county of or near the said city or other place, or to two of them, they may tax the inhabitants of the county within five miles of the place infected, at such weekly sums as they shall think reasonable, to be levied by their warrant by sale of goods, and in default thereof, by imprisonment as aforesaid. *id.* *f.* 4.

And if the infection shall be in a town where there are no justices, or in a village or hamlet; then two justices of the county may assess the inhabitants of the county, within five miles of the place infected, at such weekly sums as they shall think fit, for the reasonable relief of places infected; to be levied by their warrant by sale of goods, and in default thereof by imprisonment as aforesaid. *f.* 5.

All which said taxes shall be certified at the next quarter sessions, for such town or county respectively; and there they may order the same to continue, or be enlarged or extended to any other part of the county, or otherwise determined. *f.* 6.

Officer making default in levying the same, shall forfeit 10 s. to be employed to the charitable uses aforesaid. *f.* 6. But it is not said how this penalty shall be levied.

Searchers for
places infected.

16. And the justices, mayors, and other head officers, may appoint within their limits searchers, watchmen, examiners, keepers, and buriers for the places infected; and give them directions, and swear them for the performance thereof. 1 *J. c.* 31. *f.* 9.

Secreting goods
under quaren-
tine.

17. If any person shall conceal from the officers of quarantine, or convey any letters or goods from any ship under quarantine, or from any lazaret; he shall be guilty of felony without benefit of clergy. 26 *G. 2. c.* 6. *f.* 18.

Damaging goods.

18. If any officer or other person shall imbezil or damage any goods performing quarantine, he shall pay treble damages with full costs. 26 *G. 2. c.* 6. *f.* 11.

19. After

19. After quarentine performed, and on proof thereof by the oaths of the master and two other persons of the ship, or by the oaths of two credible witnesses before the customer, comptroller, or collector of that or the next port, or their deputies, or a justice near, and that the vessel and every such person are free from infection; and after producing a certificate thereof signed by the chief officer who superintended the quarentine; such officer of the customs, together with the said justice, shall give a certificate thereof (*gratis*), and thereupon the vessel and every such person shall be liable to no farther restraint. 26 G. 2. c. 6. f. 13, 14. Discharge after quarentine performed.

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Players.

a rogue and vagabond within the 12 *An.* (which act is repealed; but the same is re-enacted by the 17 *G.* 2. c. 5.) 10 *G.* 2. c. 28. *f.* 1.

Or otherwise he shall forfeit 50*l.* in which case he shall not also suffer as a vagrant. *f.* 2.

2. And if any play, or part thereof, be acted in any place where wine, ale, beer or other liquor shall be sold, the same shall be deemed to be acted for *gain, hire, and reward.* *f.* 7.

3. And no person shall for hire, gain, or reward, act or cause to be acted any new play, or any part therein, or any new part added to an old play, or any new prologue or epilogue, unless a true copy thereof be sent to the lord chamberlain, 14 days before the acting, together with an account when and where it is intended to be acted, signed, by one of the managers. *f.* 3.

And the lord chamberlain may prohibit the same as he thinks fit; and if any person shall act without such copy being sent, or against such prohibition, he shall forfeit 50*l.* and the licence of the playhouse shall be void. *f.* 4.

4. And no person shall be authorized to act, except within the liberties of the city of *Westminster*, and where the king shall reside. *f.* 5.

5. All the said pecuniary penalties may be recovered in the courts at *Westminster*; or before two justices, by the oath of one witness, or confession, to be levied by distress; and for want of sufficient distress, the offender to be committed to the house of correction, not exceeding six months, to be kept to hard labour; or to the common gaol, not exceeding six months, without bail or mainprize: Persons aggrieved by order of the justices may appeal to the next sessions: The said penalties to be distributed, half to the informer, and half to the poor. *f.* 6.

But by special acts of parliament playhouses are permitted to be erected in particular places.

Plate. See *Excise.*

Poison. See *Homicide.*

Polygamy.

Polygamy.

BIGAMY is, where a man has two wives successively, polygamy where he has several wives at the same time. 3 *Inst.* 88. *Stam.* 134.

By the statute of the 1 J. c. 11. *If any person within his majesty's dominions of England and Wales, being married, shall marry any person, the former husband or wife being alive; such offence shall be felony (but within clergy).*

If the first marriage was beyond sea, and the latter in England, the party may be indicted here, because the latter marriage makes the offence; but if the first marriage was in England, and the latter beyond sea, it seemeth that the offender cannot be indicted here, because the offence was not within the kingdom. *Kely.* 79, 80.

But this act shall not extend to any person, whose husband or wife shall be continually remaining beyond the seas, by the space of seven years together. *id.*

And this, altho' the party in England hath notice, that such husband or wife is living. 1 *H. H.* 693.

Nor to any person whose husband or wife shall absent him or herself, the one from the other, by the space of seven years together, in any part of his majesty's dominions, the one of them not knowing the other to be living within that time. *id.*

Nor to any person who shall be, at the time of such marriage divorced by sentence in the ecclesiastical court. *id.*

And this divorce is to be understood not only à *vinculo matrimonii*, as for precontract, consanguinity, or affinity, which dissolveth the marriage, and therefore needeth not this proviso; but also, and chiefly à *mensa & thoro*, as for adultery, which dissolveth not the marriage, yet in respect of the generality of the words, a person divorced only à *mensa & thoro* is privileged from being a felon in marrying again, although the second marriage is void. 3 *Inst.* 89. 1 *H. H.* 694.

Nor to any person whose former marriage hath been, by sentence in the ecclesiastical court declared to be void, and of none effect. *id.*

Nor to any person, by reason of any former marriage made within age of consent. *id.* That is, either the woman being under 12, or the man under 14. 3 *Inst.* 89.

On a prosecution upon this statute, the first and true wife is not to be allowed as a witness against the husband; but

Polygamy.

but it seems clear, that the second wife may be admitted to prove the second marriage, for she is not his wife so much as *de facto*. 1 H. H. 693.

Pond. See Game.

Poor.

CONCERNING the binding and ordering of parish and other apprentices, see title *Apprentices*.

Concerning the filiation and maintenance of bastard children, see title *Bastards*.

Concerning the ordering of servants, and other workmen and labourers, see title *Servants*.

For these do fall in with this title, no further than as they happen to become poor: Upon which account, their settlements are here treated of; but nothing otherwise in particular concerning them.

After having premised one general clause in the statute of the 17 G. 2. c. 38. s. 4. which seems to affect the whole law relating to this title, to wit, *That if any person shall be aggrieved by any thing done or omitted by the churchwardens and overseers, or by any of his majesty's justices of the peace, he may, giving reasonable notice to the churchwardens or overseers, appeal to the next general or quarter sessions, where the same shall be heard, and finally determined; but if reasonable notice be not given, then they shall adjourn the appeal to the next quarter sessions; and the court may award reasonable costs to either party, as they may do by the 8 & 9 W. in case of appeals concerning settlements; (This being premised) I shall treat of this extensive title in the following order: That is to say,*

- I. Concerning the appointment of overseers, with their duty thereupon.
- II. Of settlements.
- III. Of removals.
- IV. Of the poor rate, and other helps towards their relief.
- V. Of the relief and ordering of the poor.

VI. Of

VI. Of the overseers account.

VII. Penalty of overseers for the neglect of their duty.

VIII. Indemnity of overseers in the performance of their duty.

I. Appointment of overseers, with their duty thereupon.

1. Anciently, the maintenance of the poor was chiefly an ecclesiastical concern. A fourth part of the tithes in every parish was set apart for that purpose. The minister, under the bishop, had the principal direction in the disposal thereof, assisted by the churchwardens and other principal inhabitants. Hence naturally became established the parochial settlement. Afterwards, when the tithes of many of the parishes became appropriated to the monasteries, those societies had some share likewise (by reason of the said tithes, and other donations for that purpose) in the relief of the poor. And the rest was made up by voluntary contributions.—By the statute of the 27 H. 8. c. 25. The churchwardens, or two other of every parish, were to make collections for the poor, on sundays.—By the 5 & 6 Ed. 6. c. 2. The minister and churchwardens were annually to appoint two able persons or more to be gatherers and collectors of alms for the poor.—By the 5 El. c. 3. The parishioners were to chuse the said collectors and gatherers for the poor.—By the 14 El. c. 5. The justices were to appoint collectors for the poor within every parish; and were also to appoint the overseer of the poor, whose office was nearly the same as it is at present, except only for collecting the money, which was done by the aforesaid gatherers or collectors.—By the 18 El. c. 3. The justices were to appoint collectors and governors of the poor.—By the 39 El. c. 3. The churchwardens of every parish, and four substantial householders there, being subsidy men, or for want of subsidy men, four other substantial householders, to be nominated yearly in Easter week by two justices (1 Q.) were to be called overseers of the poor of the same parish.—And so it continues with some small variation, by the statute of the 43 El. c. 2. as followeth:

The churchwardens of every parish, and four, three, or two substantial householders there, as shall be thought meet, having
VOL. III. S *respect*

Appointment of
overseers in pa-
rishes and
townships.

respect to the greatness of the parish, to be nominated yearly in Easter week, or within one month after Easter, under the hand and seal of two or more justices of the peace in the same county, whereof one to be of the quorum, dwelling in or near the parish or division, shall be called overseers of the poor of the same parish. 43 El. c. 2. s. 1.

And by the 13 & 14 C. 2. c. 12. Whereas the inhabitants of Lancashire, Cheshire, Derbyshire, Yorkshire, Northumberland, the bishoprick of Durham, Cumberland, and Westmorland, and many other counties in England and Wales, by reason of the largeness of the parishes, cannot reap the benefit of the said act of the 43 El. it is enacted, that all and every the poor, needy, impotent, and lame persons, within every township or village within the several counties aforesaid, shall be maintained, provided for, and set on work, within the several and respective township and village, wherein he shall inhabit, or wherein he was last lawfully settled; and there shall be yearly chosen and appointed two or more overseers, within every of the said townships or villages respectively. s. 21.

And by the 17 G. 2. c. 38. In every township or place where there are no churchwardens, the overseers alone may act in all respects, as churchwardens and overseers may do in other places, by virtue of this or any former act. s. 15.

And if any overseer shall die, or remove, or become insolvent, before the expiration of his office, two justices (on oath thereof made) may appoint another in his stead. s. 3.

And if in any place there shall be no such nomination of overseers as is before appointed, every justice of the division shall forfeit 5l. to the poor of such place, to be levied by the churchwardens and overseers, or one of them, by distress, by warrant from the sessions. 43 El. c. 2. s. 10.

The churchwardens] These (as is above observed) were overseers of the poor long before this statute of the 43 El. And hereby they need no formal appointment to the office of overseer, but the statute declares them to be such, and requires others to be added to them by the nomination of the justices.

Of every parish] In the case of the King again *Seven and Arnold*, T. 29 & 30 G. 2. two justices appointed *Seven and Arnold*, substantial householders in the precinct of the Tower within, otherwise called the parish of *St. Peter ad vincula*, to be overseers of the poor of the said precinct. It was objected, that this appointment is not warranted by the statute, which requires that the churchwardens of every parish,

and four, three, or two substantial householders there, shall be appointed overseers of the poor of the same parish. Mr. Justice *Denison* delivered the resolution of the court (*Ryder Ch. J.* being dead, but concurring with the other justices before his death): This is not a good appointment under the 43 *El. c. 2.* which requires them to be appointed within a *parish*; neither is it good within the statute of 13 & 14 *C. 2. c. 12.* which says, that there shall be yearly appointed two or more overseers within every *township* and *village* respectively. *Precinct* is a word of ambiguous signification; it is not a boundary of any parish or vill; it may be more than a parish, or may be less. If it was a parish or vill *by reputation*, it might have been good (*Cro. Car. 92, 394*); but the court cannot intend this precinct to be a vill, and the words of the statute ought to be pursued. Neither will the words *otherwise called the parish of St. Peter ad vincula*, aid the want of this in the appointment: for in all constructions of *alias diēt'*, the words that go before the *alias diēt'* must be presumed to be true; as in an indictment, the addition of the party not coming till after the *alias diēt'* will vitiate the indictment, for what proceeds the *alias diēt'* is the true and proper appellation. If in this case the *alias diēt'* had come after the parish of *St. Peter*, it would have done. And the appointment was quashed.

Parish] *E. 8 G. King* and the inhabitants of *Rufford*. A *mandamus* was directed to the justices of the peace of the county of *Nottingham*, reciting that within the vill of *Rufford*, in the forest of *Sherwood*, there are divers substantial freeholders, able to contribute to the maintenance of the poor, and that there are no churchwardens or overseers to make a rate, and that there are poor unprovided for; therefore it commands them to appoint overseers. They return that the vill of *Rufford* is part of no parish, but time out of mind has been extraparochial, without church, chapel, or parochial rites, and that there never have been any overseers of the poor; and for that cause they cannot appoint. And there having been only an extrajudicial opinion of the court, in the case of *Dolting* and *Stokeland*, *H. 11 Ann.* that overseers of the poor might be appointed in an extraparochial place; the court directed an argument, that the point might be solemnly determined. And after argument and consideration of all the statutes relating to the poor, the court were of opinion, that the powers given by the 43 *El.* to be executed

in parishes, were by the 13 & 14 C. 2. extended to all townships and villages, whether parochial or extraparochial: that although most of the forests in *England* are extraparochial, yet notwithstanding they ought to maintain their own poor; and consequently overseers might be appointed: for which purpose in this case a peremptory *mandamus* was awarded. *Str.* 512.

For the statute directeth overseers to be appointed within the several townships and villages within the several *counties* (without saying, within the several *parishes* in the said counties); so that if it is a township or village, and such township or village is within the *county*, it seemeth not to be material whether it is within any *parish* or not.

But a township or village it must be. As in the case of *Denham* and *Dalham*, *E.* 8 G. 2. The question was, whether *Southwold* park, being an extraparochial place, consisting of two houses, and about 300 acres of land, was such a place as was liable to maintain its own poor. By the court, It is now a settled point, that the justices may appoint overseers in extraparochial places, but such place must come under the notion of a town or village. It is difficult to define exactly what is a township or village; this must be left to the judgment of the court, upon the circumstances of the case stated. The notion of a village according to the ancient law, is a tithing consisting of ten families, and the constable properly is the head of the tithing. By the 43 *Eliz.* there must in every place be at least two overseers; and where there are only two houses, the whole parish in such case must be perpetual overseers, and there is no person over whom they can have jurisdiction, nor any to chuse them but themselves. And it was adjudged, that two houses are not within the rule, so as to come within the notion of a township or village. And the like was said to have been adjudged in the case of *Belvoir*, *M.* 2 G. 2. where there were two houses, the duke of *Rutland's* and an ale-house. *Str.* 1004. *Burrow's Settlement Cases.* 35.

So in the case of *Stoke Prior* and *Grafton*, *E.* 10 G. 2. The manor of *Grafton*, an extraparochial place, once consisting of a capital messuage and three keepers lodges in the park, now disparked and consisting of five dwelling houses and farms, occupied by five several tenants, but never having had any overseers of the poor or other officer, till the overseer now appointed for the purpose of the present removal, was adjudged by the justices to be

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a township or village within the statute, unto which a removal might be made. It was moved to quash the orders of the justices, and a rule was made to shew cause; and afterwards the rule was made absolute, without defence. *Burrow's Settl. Caf.* 101.

In the case of *K.* and the inhabitants of *Welbeck, M.* 14 G. 2. A *mandamus* was granted, suggesting that there are several householders and farmers inhabiting and residing within the village of *Welbeck*, able to provide for the poor; and therefore commands the justices to appoint overseers of the poor. To this it is returned, that *Welbeck* is extraparochial, and is not, nor ever was reputed to be a village or township, and therefore they cannot appoint any persons to be overseers. And upon argument this was held to be a good return. For though it doth not answer the supposal of the writ, as to there being several substantial householders and farmers; yet it answers the point in the 13 & 14 C. 2. c. 12. by saying it is no township or village, or reputed as such: and it is to such places only that we can send a writ. *Str.* 1143.

Four, three, or two] In the case of *K.* and *Harman, M.* 13 G. 2. An appointment of five overseers was thought to exceed the direction of the statute; but inasmuch as the 13 & 14 C. 2. impowers the justices to appoint two or more (indefinitely) in townships or villages, and it hath been the custom in large parishes to appoint more than four, the court would not quash the appointment. *Self. C. V.* 2. 148.

But in the case of the *King* against *Loxdale* and others, *H.* 30 G. 2. on a rule to shew cause why an appointment of five overseers for the parish of *St. Chad* in *Shrewsbury* should not be quashed, it being objected that this appointment was not warranted by the statute of the 43 *Eliz.*—By lord *Mansfield* chief justice: Upon reading the case of the *King* and *Harman*, I find it was pressed in that case, that the usage had been for more than four overseers to be appointed; and Sir *John Strange* was instructed to argue it upon that head, on this maxim, that *communis error facit jus*. In the printed case of the *King* and *Harman*, it is said, the court refused to quash the order. But this is a mistake. Being desirous to know the usage in a variety of parishes, we desired the agents to inquire what had been the usage in the large parishes in *London* and *Westminster*, and more particularly with respect to the different

different parishes in *Shrewsbury*. The result is, in *Shrewsbury* it appears there are four parishes, in which the number of overseers has never exceeded four; but the parish of *St. Chad*, in which the present dispute arises, has five for one year only: In the parish of *St. Andrew's, Helborn*, there are eight overseers; but then there are three divisions there, and overseers for each; and orders of removal are made from one division to another: In *St. Giles's*, eight overseers; but in 1756, only four were appointed by the justices, and four more serve voluntarily as assistants: In other parishes, no more than four. This account that has been given us is very satisfactory, for it lays the usage out of the case, and proves it to have been the contrary way. This brings me to consider what are the authorities and judicial precedents in this case. And this seems to be quite a new and original case, on which there has never been any judicial opinion given. There never was any doubt till the case of the *King and Harman*; and there the court gave no determination on the validity of the appointment, as appears by the rule "and the court will further consider of the order." The case of the *King and Besland*, *H. 18 G. 2.* was very different from this; there it was impossible to have more than one overseer. But there was no judicial opinion in that case, so that neither of these two cases hath any determination extending to the present case. This case therefore being an original one, it must be determined on the true construction of the statute of the 43 *Eliz.* which may be called, The great constitution of the system of law concerning the poor. To incline the court to construe this act with a latitude, two other clauses have been mentioned, that have been held merely directory: One is, with respect to the time of appointing; now the precise time is not of the essence of the thing, where third persons, and innocent ones, are affected. As in the case of the town of *Launceston*, 1 *Roll's Abr.* 513. An appointment after the time was held to be good, rather than defeat the intent of the charter, and leave the corporation destitute of a magistrate by another construction. So in the case of the *King* against *Sparrow* and others (*Str.* 1123.) where the overseers were appointed more than a month after *Easter*; and to have said in that case, that there could not have been an appointment after the time, would be to say, that there is no remedy for the neglect of the justices to appoint within the time. The other clause is, to be nominated by the justices *in or near*. This is a loose indefinite

finite expression. If a justice lives 20 miles off, if there is none nearer, he must be said to be near. It is a word of relation. I do not see how this clause could be construed otherwise. And tho' some part of the act should be construed to be directory, yet it cannot from thence be inferred that the whole is so. It is a rule of construction, that where persons as justices, commissioners, or the like, have a special authority by statute, they have no power but under that statute; and if the thing is done otherwise, and not agreeable to the special authority, it is void. There is no room for the distinction, that there must be negative words to circumscribe the power. It was said at the bar, that if a man has a power originally, and an act of parliament gives him something less than he had before; there, without negative words, the act will not take away that which he had before. But it can never be necessary for the act to say a man shall not do what he could not do before. The meaning of the legislature was not to leave the justices an absolute discretion, but to confine their discretion not to exceed four, nor to appoint less than two. There is another rule of construction: Where there are at different times different statutes made concerning the same matter, tho' some of them should be expired, and not referred to by the subsequent statutes; yet being *in pari materia* they shall all be taken together and considered as one system of that branch of positive law, and giving light to one another. This has been so determined of the disabling statutes concerning leases by ecclesiastical persons, so the statutes relating to bankrupts, some of which are temporary, are *in pari materia*, and shall be taken together. Thus all the statutes since the reformation concerning the poor, I consider as a new body of positive law, and they must be taken together. By the 39 *Eliz. c. 3.* four overseers were to be appointed, and there was no latitude at all. If the question had stood upon that statute, the justices could not appoint a greater number. There is a late instance: By the *British museum act, 26 G. 2. c. 22.* the trustees, or the major part of them, were to do certain acts. It was found impossible to get the major part of them together, and they were forced to apply for a new act, 27 *G. 2. c. 16.* giving power to the major part of the trustees then present, not less than seven, to do those acts. It is plain to me, that in making the 43 *Eliz.* the legislature had the 39 *Eliz.* under their contemplation. They refer to it; and the 43 *Eliz.* was not to commence till the *Easter*

following. The 39 *Eliz.* expired with the session in *December*: They therefore continued the 39 *Eliz.* till the *Easter* following. This clearly accounts for the expression four, three, or two; rather than two, three, or four; (for there is a great difference between these two expressions;) and points out to a demonstration what the legislature meant. Parishes were not so populous then; and four were thought too many; and therefore the 43 *Eliz.* gives a latitude to appoint fewer, and directs the justices to be governed by the greatness or smallness of the parish. It has been contended, that the 13 & 14 *C. 2.* is a legislative exposition of the 43 *Eliz.* I do not see that that statute will vary the question one way or the other. That statute is to make each township in the nature of a separate parish; and says, that two or more overseers shall be chosen in each township. I listened for a case to shew that in these townships they could appoint five. Upon enquiry, it does not appear that more than two have been appointed. The statute of *C. 2.* refers you, as to the appointment, to the statute of the 43 *Eliz.* by express words, and this reference is the same as repeating the statute. It was observed that there has been a great latitude in the construction of *C. 2.* that is, that it hath been extended to counties not therein named. But it would have been absurd to say, that that statute reciting an inconvenience in *Wales*, should extend to some other place only. The statute made in the year 1740, for the parish of *St. Martin's* in the Fields has great weight with me. This proceeded from a conviction in those that applied for the act, that they could not appoint more than four. It shews that the parliament thought it was a real doubt, and that they thought it necessary there should be a boundary; for they have not left it at large, but confined the parish not to exceed nine overseers. There are two acts which passed after the case of the *King* and *Harman* and the act for *St. Martin's* parish, in the 17 *G. 2.* to remedy some inconveniences relating to the overseers, with regard to rates and other matters; and yet they make no alteration in the number of overseers. In the parish of *St. Clement's Danes*, they have restrained themselves to four ever since. And the precise number is not immaterial, as was said at the bar, either to the parties themselves, for it is a burthensome office, and the more there are at the same time, the quicker will the rotation be; or to the parishes for whom they are trustees, for a trust is not the better discharged by a greater number than by a few. There may be more expence in a larger number. They may be obliged

to divide themselves into separate quorums ; which is no immaterial consideration to the persons with whom they are to act. If five may be allowed, there will be no boundary, and then there will be great inconveniences. Upon the whole, the words are precise ; and the usage, which alone occasioned my doubt, turns out the other way. This appointment is not warranted by the 43 *Eliz.*

—Mr. justice *Denison* was of the same opinion. He said if this had been a matter of doubt, it is strange that it should never have come before the court before the case of the *King* and *Harman*, in the 13 *G. 2.* In that case they did not quash the appointment, for the sake of the poor of that particular parish. This is an original creation of a jurisdiction for the maintenance of the poor. The number of overseers is the essential part of the constitution. Where a jurisdiction is created by statute, you cannot vary from it. This office is partly ministerial and partly judicial. The statute of 13 & 14 *C. 2.* is tied up according to the rules of the 43 *Eliz.* and one of the rules is the restraint. As it has rested so long, I am of opinion an appointment of five overseers cannot be warranted.—By Mr. justice *Foster* : I never had a doubt. The court has gone hitherto upon the prudential reason of not overturning the rates of so many parishes. In queen *Elizabeth's* time there were no large and populous parishes in great towns and cities. There were indeed parishes of large extent in the country ; but they are provided for by the 13 & 14 *C. 2.* If any inconvenience arises from having too few officers in particular parishes, you must apply to parliament. It would produce confusion to have more officers. The 43 *Eliz.* is the first statute now in force, but not the first which provided for the poor. It does little more than make the 39 *Eliz.* perpetual. And there were several statutes before that.—By Mr. justice *Wilmot* : The circumstance that made me doubt was, the notion of an usage to have more than four overseers in large parishes. The words of the act are so strong, that had the usage been otherwise, I should have doubted whether that could have controuled them ; but the usage being to appoint but four, it furnishes a strong argument. And the act for *St. Martin's* is a strong instance of the sense or the legislature. The parliament finding two parochial officers, to wit, the churchwardens, added others for the parochial administration, The 43 *Eliz.* relaxes the 39 *Eliz.* and gives a discretion within the number four, In the 18th clause, with respect to the island of *Fowlness* in *Essex*, a power is given to the justices, to appoint such

a number of overseers as the exigencies of the place shall require; which shews, that where the legislature meant an indefinite number, they have expressed it. In general, it would be inconvenient to have an indefinite number; it would not lessen the burden; nor would the parish have a greater security, for each man is answerable only for the money he receives, and accountable for his own acts only.

Substantial householders there] *M. 20 G. 2.* Case of the overseers of *Wobly* in *Herefordshire*. There were two sets of overseers appointed, and both quashed; one, because the persons appointed were described only as *principal inhabitants*, instead of pursuing the words of the statute, which are, *substantial householders*: and the other, because it only called them substantial householders, without adding *there, or in the parish*; and this too was not in the body of the appointment (as it ought to be) but only in the direction at the foot of it. *Str. 1261.*

And abundance of other orders have by the court of king's bench been quashed from time to time, for not setting forth that the persons appointed were substantial householders.

And it seems not to be sufficient that the party appointed is an inhabitant for part of the year only, but he ought to be generally resident there; and therefore the court of king's bench seemed to discountenance a parish in chusing a citizen of *London*, who only resided with them in the summer, to be overseer; but the order being bad in other respects, no judgment was given upon this point. *Carth. 161. K. and Moor.*

It seemeth that a *woman* (though a substantial household) ought not to be appointed overseer; but the point was not directly determined. The case was this: A *mandamus* was moved for to the justices to nominate two substantial householders to be overseers of the poor of the parish of *Chardstock* in the county of *Dorset*; and there was an affidavit, that at a meeting of the parish after *Easter* last, a man and a woman were elected overseers, and at a meeting of the justices they approved of the man, and refused the woman, as being an unfit person to serve as overseer; and the old overseers refusing to nominate any other, the justices approved of the man only. By *Powel J.* A woman is not to be an overseer of the poor, and there can be no custom in a parish to put her in, because of her being an householder. And *Parker Ch. J.* directed,

directed, that the parish should apply to the justices to have another nominated, and if they refused, then to apply to the court for a *mandamus* the next term. *E. 10 An. Vin. Tit. Poor. A.*

Whether a *justice of the peace*, may be appointed overseer, seemeth not to have been determined. By the tenor of the following report, it seemeth to be in a great measure discretionary in the justices appointing, and in the sessions upon an appeal, to determine whether he is a fit person or not, *H. 30 G. 2. Rex v. James Gayer, esquire.*

Two justices appointed Mr. *Gayer* to be overseer of the poor of the parish of *Rockbear* in the county of *Devon*. The sessions, upon appeal, vacate the appointment; setting forth, that it appearing to them that he was then an acting justice of the peace for the said county, and also a lieutenant of marines in his majesty's service on half pay, and that there are other sufficient substantial householders within the said parish for the doing such office, they therefore vacate and make void the appointment of the said *James Gayer*.—On a rule to shew cause, the counsel on both sides went into a long argument, whether the reasons given were sufficient; particularly, whether the offices of justice of the peace, and of overseer of the poor were compatible, and whether the objection could be removed by appointing a deputy overseer, if it could, then, whether a justice of the peace was liable to be appointed overseer, in order to his executing the office by deputy.—By lord *Mansfield* Ch. J. The general questions concerning the incompatibility of offices, and the power of appointing deputies, are of a very large compass indeed; but the present question seems to me to turn in a very narrow space. The sessions, upon an appeal, have a right to exercise upon the same latitude of discretion, in judging who are fit to be nominated overseers, as the two justices had. They have given their opinion, that Mr. *Gayer* was not a proper person to be appointed overseer. They are not obliged to give any reason for their opinion; because the legislature has intrusted them, upon an appeal, with the power or authority of appointing overseers. If they had given no reason, their order had undoubtedly been good. We must have presumed that they acted upon proper grounds. It is true, that where the whole reason is set out, and is clearly wrong; we may, and ought to quash an order manifestly made by mistake, upon an erroneous foundation. But then the bad reason given, must appear to have been their only

only inducement. If there may have been other grounds, they should be presumed sufficient; and the order ought not to be set aside, because some of their reasons, unnecessarily given, appear to be bad. There was no necessity for appointing Mr. *Gayer*. The sessions state, that there were other sufficient substantial householders within the parish. They might think Mr. *Gayer*, under all the circumstances, improper unnecessarily to be appointed. His being an acting justice of the peace, and a lieutenant of marines, might be two circumstances which weighed among others. But it doth not follow, neither is it said, that they looked upon both or either of these reasons, as an exemption from being appointed, or a disability to serve the office of overseer; and that they vacated the warrant of two justices as illegal upon that account. The execution of a discretionary power, where it is not necessary to give a reason, ought to be supported, unless the whole reason is set out, and manifestly wrong. Here, the whole reason, upon which the sessions acted, is not given. They say there were other persons qualified. Supposing Mr. *Gayer* liable to serve the office, they might think him not so proper as many others. And therefore we are not obliged to say, that the whole reason they went upon is bad; allowing (for argument) that there arose no legal objection to the appointment of Mr. *Gayer*: Which, I think, there is no occasion now to examine.—Mr. Justice *Denison* concurred, and said, They were not obliged to give any reason at all; and if it be only an imperfect one, we ought not to quash their orders. We will intend every thing, in favour of the justices, in their orders. Now here, the reason doth not appear to be a wrong reason: It is enough, that they judged him an improper person to be overseer.——And by the court unanimously, the order of sessions was confirmed, and the order of the two justices quashed. *Burrow, Mansfield.* 245.

By the 2 G. 3. c. 20. No person serving for himself as a private man in the *militia*, shall during the time of such service be liable to serve as overseer of the poor. [But the act provides no exemption for the officers.]

By the 18 G. 2. c. 15. Freemen of the corporation of *surgeons in London*, are exempted from the office of overseer of the poor.

To be nominated yearly in Easter week] E. 13 G. K. and *Clerkenwell*. The court seemed to think an appointment of

of overseers on a *sunday*, to be a good appointment; for it may be in *Easter* week, and this is the first day of the week. *Foley* 4.

Or within one month after Easter] *H. 13 G. 2. K. and Sparrow*. Upon a rule to shew cause, why the appointment of overseers for the town of *Ipswich* should not be quashed, the objection was, that the justices, upon a *mandamus* directed to them, had appointed overseers, but that it was not within the month after *Easter*, but afterwards, and that consequently the appointment was void. But by *Lee Ch. J.* who delivered the opinion of the court; as the justices are punishable by the act for not doing their duty, it would be a very hard construction to make the act itself void, for it would subject the parish to very great inconveniences, for a thing which is not in their power to prevent. To interpret an act of parliament, we must consider the mischief to be remedied, the remedy provided, and the true reason of that remedy. In this case, the defect is, the want of a proper officer to take care of the poor. The remedy is, that the justices shall appoint overseers, and that within such a time. Now the justices have neglected their duty, in not appointing overseers within the proper time, and by the act have forfeited 5*l.* but that doth not make such appointment void. Were the express direction of the act, that they should appoint in that and no other time, it would be otherwise; but here the statute is only directory, and a penalty inflicted on the justices for not following such directions. *Seff. C. V. 2. 140. Str. 1123.*

Under the hand and seal of two or more justices] *M. 13 G. Chilmerton and Flagg*. The sessions appointed overseers: but the order was quashed by the court of king's bench, because the sessions have no original jurisdiction in that case by the statute. *Seff. C. V. 1. 260. Foley 7.*

And the reason is, because the statute gives a power of appealing to the sessions against the order of appointment; which power by this means would be taken away.

In or near the parish or division] *M. 13 G. 2. K. and Sparrow*. An appointment of overseers, not mentioning the justices to be of the division, was held to be good enough; for that the words in this case are only directory. *Seff. C. V. 2. 140.*

In some of the ancient statutes, not now in force, as particularly the 22 *H. 8. c. 12.* the justices were required

to divide themselves, for the better execution of the regulations concerning the poor. And thence came the clause in the subsequent statutes, that the justices of the division were to do such and such things. But as there is no law at present which requires them to divide for the aforesaid purposes, there is properly no division in the sense which the statutes intended; and consequently it cannot be necessary to set forth now, that the justices are in or near the division.

And many other counties in England and Wales } T. 27 C. 2. in the case of *Skillington and Norton*, it was held, that altho' other counties in general are here mentioned in the recital; yet the statute doth not extend to any other counties but those expressly named, none others being specified in the enacting part. 2 Lev. 142.

But afterwards, in the case of *Dolting and Stokeland*, H. 11 An. It was held by the whole court, that by reason of the words [*and many other counties in England and Wales*] the act is general, and extends to other counties than those named in the act, otherwise it would not extend to one county in *Wales*. Foley 98.

And in the case of *Clifton and Churcham*, H. 12 G. 2. It was adjudged. that the act extendeth to all counties, being equally beneficial to all; and that the counties there specified are mentioned only as instances. And Lee Ch. J. said that so it was determined, upon great debate and consideration, in the aforesaid case of *Dolting and Stokeland*; which case hath been ever since adhered to. And. 314.

Within the several and respective township and village] But it is said, that this shall refer only to the divisions of parishes then made in pursuance of the said statute of the 13 & 14 C. 2. and not to give power to divide in all times to come: As in the case of the *King and the Justices of Middlesex*, some few years ago; a mandamus was moved for to the justices, to appoint separate overseers for the different divisions in one of the parishes there, in which the overseers had before acted jointly. And it was determined by the court, that this could not now be done.

If in any place there shall be no such nomination as is before appointed] That is, in *Easter week*, or within one month after *Easter*. For the clause doth not suppose, that no overseers at all are appointed within such place, but only not within

within such time, for the penalty is required to be levied by the churchwardens and overseers, or one of them.

Every justice of the division shall forfeit 5*l*. This proceeds upon the supposition of the justices being obliged to divide; for in that case the appointment was to be by the justices in or near the division, and not otherwise. But now the justices at large are all equally concerned; and therefore it seemeth, that this penalty cannot now be levied on any particular justice. But if in any place no overseer shall be appointed, a *mandamus* will go to the justices at large, to compel them to appoint.

2. And that the justices may know what persons are fit to be appointed overseers, it is usual and requisite for them to issue their precepts in some such form as here followeth; viz.

Warrant for returning list of overseers.

Westmorland. } To John Bracken, gentleman, high constable of Kendal Ward, within the said county.

WE two of his majesty's justices of the peace for the said county, one whereof is of the quorum, do hereby require you forthwith upon your receipt hereof, to issue your warrants to all the petty constables within your said ward, in the form or to the effect, according as upon this our warrant is indorsed: Given under our hands and seals the—day of—

The form of the said high constable's warrant to the petty constables,

Westmorland, } To the constable of—
Kendal ward.

BY virtue of a precept from two of his majesty's justices of the peace in and for the said county (one whereof is of the quorum) to me directed, you are hereby required immediately upon sight hereof, to give notice to all and every the overseers of the poor within your constablewick, that they make out a list in writing of a competent number of substantial householders within their respective districts, and deliver in the same to the said justices and others his said majesty's justices of the peace for the said county, at—in—in the said county, on—the—day of—at the hour of—in the forenoon of the same day; to the end that out of the said list the said justices may appoint other overseers of the poor for the

year then next ensuing. And be you then there, to certify what you shall have done in the premisses. Herein fail you not. Given under my hand the——day of——in the year of our lord——.

John Bracken, high constable.

Form of an appointment of overseers.

3. And the form of an appointment of overseers, clear of the objections abovementioned, may be thus :

Westmorland. **W**E two of his majesty's justices of the peace in and for the said county, one whereof is of the quorum, do hereby nominate and appoint A. O. and B. O. being substantial householders of the parish [or, township] of——in the said county, to be overseers of the poor of the said parish [or, township] according to the direction of the statute in that case made and provided. Given under our hands and seals (within a month after Easter.)

But by a remedial clause, in the act of the 17 G. 2. c. 38. it is enacted, that the distress for the poor rate shall not be deemed unlawful, for any defect or want of form, in the warrant for the appointment of overseers. s. 8.

Appeal against the order of appointment.

4. If any person shall find himself aggrieved, by any act done by the said justices ; he may appeal to the general quarter sessions, whose order therein shall bind all parties. 43 El. c. 2. s. 6.

To the general quarter sessions] This clause leaves the appeal at large, and doth not restrain it to the next sessions : But the abovementioned act of the 17 G. 2. directs the appeal to be to the next sessions, but yet not in negative words, so as to say, that it shall be at the next sessions, and not otherwise. So that both may seem to stand well together ; and then the sense of the statute of the 17 G. 2. will be this, That the appeal against any thing done or omitted by the overseers or justices, in cases wherein no appeal is given by former statutes, must be to the next sessions only, because the clause which gives the appeal, limits it to such next sessions ; but in cases wherein an appeal is given by former statutes, such appeal may be to the next sessions according to this clause, or may be according to the directions of such former statutes. And in truth many acts of the churchwardens and overseers may be so contrived, that they cannot be known before the next sessions, and it would give them a great opportunity of fraud,

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fraud, if they might be safe by concealing such practices, until the time of appealing to the next sessions should be expired. But then, in the case before us, there is no power to award costs, unless the appeal be to the next sessions by the 17 G. 2.

5. *M. 14 G. 2. K. and Jones.* A person was indicted, for not taking upon him the office of overseer; and by the court it was held to be an offence indictable; for that although the statute appoints a penalty, yet that penalty is not for refusing to take the office, but for neglect of duty in that office; and where a statute commands a thing, and appoints no penalty for disobedience, such offence is indictable as a contempt of the law. *Sess. C. V. 2. 187. Str. 1146.*

Overseer refusing to take the office.

6. The overseers thus appointed, and taking upon them the office, shall within 14 days receive the books of assessments and of accounts, from their predecessors, and what money and materials shall be in their hands, and reimburse them their arrears. 17 G. 2. c. 38. s. 1, 11, 13.

Overseers general duty.

And they shall take order from time to time, with the consent of two such justices as aforesaid, for setting to work the children of all such whose parents shall not by the said churchwardens and overseers, or the greater part of them, be thought able to keep and maintain them; and also for setting to work all such persons, married or unmarried, having no means to maintain them, and using no ordinary and daily trade. Which said churchwardens and overseers, or such of them as shall not be let by sickness or other just excuse, to be allowed by two such justices, shall meet at least once a month, in the church, on Sunday in the afternoon, after divine service, there to consider of some good course to be taken, and order to be set down in the premises: Upon pain that every one of them absenting themselves without lawful cause, from such monthly meeting, or being negligent in their office, shall forfeit for every default 20s. to the poor; to be levied by some or one of the churchwardens and overseers, by warrant from two such justices, by distress; or in default thereof, any two such justices may commit the offender to the common gaol, there to remain without bail or mainprize, till the said forfeiture shall be paid. Provided, that if any person shall be aggrieved by any act done by the said churchwardens and other persons, he may appeal to the general quarter sessions whose order therein shall bind all parties, 43 El. c. 2. s. 1, 2, 6, 11.

In the church] But the penalty for not meeting in the church shall not be inflicted on the overseers of extraparo-

chial places; because they have no church to meet in.
8 Mod. E. 7 G.

II. Of settlements.

By a statute made in the 12 R. 2. (c. 7.) The poor were to repair, in order to be maintained, to the places where they were *born*.—By the 11 H. 7. c. 2. they were to repair to the place where they *last dwelled*, or were *best known*, or were *born*.—By the 19 H. 7. c. 12. to where they were *born*, or *made last their abode by the space of three years*.—By the 1 Ed. 6. c. 3. this was explained to be, where they had been *most conversant* by the space of three years.—By the 1 J. c. 7. they were to be sent to the place of their *dwelling*, if they had any; if not, to the place where they last dwelt by the space of *one year*; if that could not be known, then to the place of their *birth*.—So that there were two kinds of settlement all along; by birth; and by inhabitancy, first for any indeterminate time, next for three years, then for one year. And this last continued to the time of the statute of the 13 & 14 C. 2. c. 12. which reduced the residence from the term of one year, to the space of forty days. Which statute of the 13 & 14 C. 2. will often occur in the following sections, being the foundation of all the settlements as they stand at this day; upon which act there have been more cases adjudged, than upon any other act in the statute book.

But that I may treat distinctly, and as clearly as may be, concerning this subject of settlements, (after having first premised one general rule which controlls almost all the cases of settlements, *viz.* That *no settlement can be legal, which is brought about by practice or compulsion*; Read. Tit. Poor) I shall proceed in the following method:

- i. Of persons having no settlement.
- ii. Of certificates.
- iii. Of settlement by birth, *viz.* of bastards, and others.
- iv. Of the settlement of children with their parents.
- v. Of settlement by apprenticeship.
- vi. Of settlement by service.
- vii. Of settlement by marriage.

- viii. Of settlement by continuing forty days after notice.
- ix. Of settlement by paying parish rates.
- x. Of settlement by serving a parish office.
- xi. Of settlement by renting ten pounds a year.
- xii. Of settlement by a person's own estate.

i. Of persons having no settlement.

Whereas the number of poor within England and Wales, is very great and burthensome ; and whereas, by reason of some defects in the law, poor people are not restrained from going from one parish to another,——it is enacted, that within forty days after any such persons shall come to settle in any tenement under 10 l. a year, two justices (1 Q.) may remove them to the place where they were last legally settled. 13 & 14 C. 2. c. 12. § 1.

Poor within England and Wales] By these words of restriction, and the word [*such*] afterwards, which seems to have reference to those kinds of poor only, and by the direction of removing them to the place where they were last legally settled, which can only mean where they were last legally settled within the then kingdom; it may seem, that other poor, not belonging to *England* or *Wales*, are not within the regulations of this statute.

And in *Conrad's* case, *T. 6 W.* it was adjudged and declared as follows: A woman and her two children landed at *Harwich* from *Holland*, and removing to another place, were sent back by order of two justices: But by the court. The landing makes no settlement; and the order was quashed. And *Eyre J.* (*Holt Ch. J.* being absent) seemed to be of opinion, that this is a case omitted out of the statute. *Comb.* 287.

And if there is a defect in the law with respect to the subjects of a foreign realm, the case of a *Scotchman* or *Irishman* in *England* seemeth to be not much different, except only when they shall become vagrants, for in such case they may be sent into *Scotland* or *Ireland*: But otherwise, if they be able to maintain themselves, and commit no act of vagrancy, it doth not appear that they can be removed by order of two justices, as persons likely to become chargeable. By which means they seem to be in a better condition in *England*, than the *English* subjects: For

that, not being removeable, until they be forced to ask relief, and so thereby become vagrants, as wandering abroad and begging; they may continue undisturbed, without the intanglements of a certificate, and consequently are in a better capacity of gaining settlements, if not for themselves, yet for their children born here, and for their servants and apprentices.

Within forty days] The statute of the 1 J. 2. requires that such 40 days continuance shall not make a settlement, but from the time of delivering notice in writing; and by the 3 W. it must be from the time of the publication of such notice in the church: But it hath always been understood, that a person not removeable need not to give such notice; and that a person continuing 40 days *unremoveable*, and a person *not removed* for 40 days after such notice given and published, shall equally gain a settlement. Now the following case happened, E. 2 G. between the parishes of St. Giles and St. Margaret: An *Englishwoman* was married to a foreigner, who had no settlement in *England*; the husband continued for the space of 40 days in a parish *unremoveable*, for that there was no place to which he could be removed; and it was urged, that the wife continuing with him, as part of his family, for 40 days *unremoveable*, she did thereby gain a settlement: But by *Holt Ch. J.* Where a person stays 40 days in a place, whence he hath a right not to be removed, that gains a settlement; otherwise, where he only stays in a place, because they do not know where to remove him. And in this case, he said, that he did not know that a foreigner had a right to be maintained in any place to which he came, but that they might let him starve. *Seff. C. V. 1. 97.*

But there is another thing to be considered. It appears, in that case, that there was a *terminus a quo*, but not a *terminus ad quem*; or in other words, that the man's situation in the parish was not such as the law calls *unremoveable*, as if he had rented a tenement of 10 l. a year; but that in fact he was *removeable*, if they had known whither to have sent him. But put the case, that he had rented a tenement of 10 l. a year; or, which is the same thing, that a *Scotchman* or *Irishman* had rented a tenement of 10 l. a year: The question is, Whether by continuing thereupon 40 days *unremoveable*, he would thereby have gained a settlement in pursuance of this statute? If it is answered in the affirmative, then this will follow; that if

he

he comes to reside upon a tenement under 10 l. a year, and gives notice in writing, and causes the same to be published as the law requires, and continues 40 days after such publication *unremoved*, he must by the same statute gain a settlement. And if so, a *Scotchman* or *Irishman* may settle himself and his family in 40 days time, in any parish whatsoever, where he can procure any little cottage to live in, by giving and causing to be published such notice as aforesaid. On the other hand, if we have recourse to the observation above mentioned, and say, that this statute extends only to the poor of *England* and *Wales*, then this will follow; that a *Scotchman* or *Irishman* can gain no settlement in *England* by virtue of this statute, and if not by this, then not by any other of the subsequent statutes concerning settlements, for that they are all relative thereunto, and depending thereupon; that is to say, in these circumstances a *Scotchman* or *Irishman* can gain no settlement in *England*, neither by renting 10 l. a year, nor by continuing 40 days after notice, nor by apprenticeship, nor by service, nor by paying parish rates, nor by serving a parish office. — The practice seems to be universally allowed in favour of the former opinion.

ii. Of certificates.

Before we come to treat especially of settlements, it will be necessary to speak somewhat of certificates, as affecting settlements several ways.

By the 13 & 14 C. 2. c. 12. Power is given upon complaint of the churchwardens or overseers, within 40 days after a person is come to settle on any tenement under 10 l. a year, unto two justices (1 Q.) to remove such person to the place where he was last legally settled, *unless he give sufficient security for discharge of the parish, to be allowed by the said justices.* s. 1.

And by the 8 & 9 W. c. 30. it is enacted as follows: Forasmuch as many poor persons chargeable to the place where they live, merely for want of work, would elsewhere maintain themselves, but not being able to give such security as may be expected, on their coming to settle in any other place, it is therefore enacted, That if any person who shall come into any parish or place there to reside, shall at the same time procure, bring, and deliver to the churchwardens or overseers of the parish or place where he shall come to inhabit, or to any of them, a certificate, under the hands and seals of the churchwardens and overseers of any other parish, town-

ship or place, or the major part of them, or of the overseers where there are no churchwardens; to be attested by two or more credible witnesses; thereby owning and acknowledging the person mentioned in the said certificate, to be an inhabitant legally settled in that parish, township, or place: Every such certificate, having been allowed of and subscribed by two justices of the place from whence the certificate shall come, shall oblige the said parish or place, to receive and provide for the person mentioned in the said certificate, together with his family, as inhabitants of that parish, whenever they shall happen to become chargeable to, or be forced to ask relief of the parish, township, or place, to which such certificate was given: And then and not before, it shall be lawful for such person, and his children, tho' born in that parish, not having otherwise acquired a legal settlement there, to be removed, conveyed, and settled in the parish or place, from whence such certificate was brought. s. 1.

By the 9 & 10 W. c. 11. No person who shall come into any parish by such certificate, shall be adjudged by any act whatsoever to have procured a legal settlement in such parish, unless he shall really and bona fide take a lease of a tenement of the yearly value of 10 l. or shall execute some annual office in such parish, being legally placed in such office.

By the 12 An. st. 1. c. 18. s. 2. If any person shall be an apprentice bound by indenture, or be a hired servant, to any person who came into or shall reside in any parish, township, or place, by means or licence of such certificate, and not afterwards having gained a legal settlement there; such apprentice or servant shall not be adjudged thereby to have any settlement in such parish, township, or place; but shall have their settlements in such place as if they had not been apprentices or servants as aforesaid.

And by the 3 G. 2. c. 29. The witnesses who attest the execution of the certificate by the churchwardens and overseers, or one of the said witnesses, shall make oath before the justices who are to allow the same, that such witness or witnesses, did see the churchwardens and overseers of the poor, whose names and seals are thereunto subscribed and set, severally sign and seal the said certificate; and that the names of such witnesses, attesting the said certificate, are of their own proper hand writing: Which said justices shall also certify, that such oath was made before them. And every such certificate so allowed, and oath of the execution thereof so certified by the said justices, shall be taken, deemed, and allowed, in all courts whatsoever, as duly and fully proved, and shall be taken and received as evidence, without other proof thereof. s. 8.

The

The form of which certificate may be this :

To the churchwardens and overseers of the poor of the parish of
Penrith in the county of Cumberland.

WE the churchwardens and overseers of the poor of the
parish of Orton in the county of Westmorland, do
hereby certify, own and acknowledge, that A. L. yeoman, is an
inhabitant legally settled in our parish of Orton aforesaid. In
witness whereof we have hereunto set our hands and seals, the
— day of — in the year of our lord —

Attested by

A. W.

B. W.

A. B. }

C. D. }

E. F. }

G. H. }

Churchwardens.

Overseers of the

poor.

We J. P. and K. P. esquires, two of his majesty's justices of
the peace in and for the said county of Westmorland, do allow
of the above-written certificate. And we do also certify, that
A. W. one of the witnesses who attested the same, hath this day
made oath before us the said justices, that he the said A. W.
did see the churchwardens and overseers of the poor of the
parish of Orton aforesaid, whose names and seals are there-
unto subscribed and set, severally sign and seal the same ; and
that the names of A. W. and B. W. who are the witnesses
attesting the said certificate, are respectively of their own
proper hand-writing. Given under our hands this — day
of —

Certain general rules concerning certificates.

I. A parish cannot be compelled to grant a certifi-
cate.

As in the case of *K. and St. Ives*, *H. 3 G. 2.* A man-
damus was moved for, to compel the churchwardens and
overseers to sign a certificate ; but the court rejected the
motion as a very strange attempt. *Seff. C. V. 2. 128.*

II. A misdirection of the certificate will not vitiate it.

For the statute doth not require any particular direction ;
and therefore it is equally effectual, whether addressed to
any particular place, or addressed in general terms, or not

addressed at all, provided it contains an acknowledgment of the settlement of the persons certified for. As in the case of *St. Nicholas in Harwich and Woolverstone*, *H. 15 G. 2*. The pauper came into the parish of *St. Nicholas in Harwich*, with a certificate from *Woolverstone*, addressed to the parish of *Harwich near Dover court*. The sessions were of opinion, as there was a mistake in the name of the parish in the address of the certificate, that *Woolverstone* could not be obliged to receive the pauper. But upon debate in the court of king's bench, it was ruled they were: For it is not to be considered as a certificate to any particular parish, but as a general acknowledgment of his being a parishioner of *Woolverstone*, and is conclusive against them for all the world. *Str. 1163. Burrows Settl. Caf. 171*. [But whether the parish of *St. Nicholas* might have been obliged to receive that certificate, directed not to them, but to another place, is a question not determined.

III. A certificate is not binding unless signed by the justices.

H. 8 G. 3. Wooton St. Laurence and Mitcheldever. The parish officers of *St. Laurence* gave to *Thomas Pryor* the pauper, a common printed form of a certificate, acknowledging him to be settled in the said parish of *St. Laurence*. It was signed and sealed by the parish officers, and attested by two witnesses. But the blanks for the allowance of justices were not filled up, and no name of any justice signed thereto. On his return to the parish granting the certificate, they relieved him until the time of this removal. It was urged, that this certificate, not being signed by the justices, was not binding. On the contrary, it was urged, that it was a full acknowledgment that the pauper was their parishioner; and the parish of *St. Laurence* having all along submitted to it, they are concluded from disputing it. And the parish ought to be bound by the act of their overseers, who are of their own chusing. Many acts or even omissions of the parish officers may bind their parish. But here is a solemn acknowledgment under their hands and seals, that the pauper was settled in *St. Laurence*.—But by lord *Mansfield* and the court: A certificate cannot conclude the parish, unless properly signed. The certificate act specifies certain checks and guards upon certificates. The justices are not obliged ministerially to allow and sign

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sign a certificate. They have a discretion to allow it, or not to allow it, if it be liable to objection. The act requires a conclusive certificate to be under the checks and guards therein particularized. This certificate wants them. Therefore it is no certificate within the act. And if it is not a certificate within the act, it cannot conclude the parish. *Burrow's Settl. Cas.* 581.

IV. A certificate extends to children born after the granting thereof.

As in the case of *Sherborne* and *Thornford*, *E. 15 G. 2.* *Humphrey Eyres*, father of *George Eyres* the pauper, came by certificate from *Thornford* into the parish of *Sherborne*, with his wife and family; by which certificate, the said *Humphrey* and his wife and family were owned to be legal inhabitants of *Thornford*. In about two years after the said *Humphrey* went into the parish of *Sherborne*, his then wife died, and shortly after he married a second wife, by which second wife he had the pauper *George Eyres*. Which said *George*, when he was about 16 years of age, was hired for a year and served that year in the said parish of *Sherborne*. The principal question was, Whether the son of a certificate person, born after the certificate, can gain a settlement otherwise than a certificate person himself can. And by the court, *The 8 & 9 W. c. 30.* extends not only to the certificate man himself, but likewise to all his family and all his children, whether born before or after the certificate. And the *9 & 10 W. c. 11.* declares what shall gain them a settlement in that parish to which they come by certificate, and restrains it to two methods only, which it specifies; and service is neither of these two methods to which it is restrained. *Burrow's Settl. Cas.* 182.

So in the case of *Bray* and *Shottesbrooke* *H. 19 G. 2.* The father of the pauper *James Gould* came by certificate from *Shottesbrooke* to *Bray*; after which, the said pauper was born, and at the age of 20 years was hired for a year and served the same in *Bray*. It was objected, that the son being born after his father came from *Shottesbrooke* to *Bray*, cannot be considered within the words of the act as coming into the parish by certificate, and being 20 years of age he ought not to be considered as part of his father's family and dependent upon his settlement. But by the court, the case of *Sherborne* and *Thornford* is in point, and was settled upon good reason; because as the son has the ad-

advantage of the certificate, and cannot be removed until actually chargeable, so he ought on the other hand to be bound by the terms of it. *Bur. Settl. Cas.* 259.

And the like was adjudged in the case of *Buckingham and Maid's Moreton*, *H.* 25 G. 2. As a point clearly determined and settled, *Bur. Settl. Cas.* 314.

V. A certificate is conclusive against the parish certifying.

—*M.* 9 *An. Honyton and St. Mary Axe.* The question was, whether the parish granting the certificate was bound thereby as to the parish only to which the certificate was granted, or concluded as to all parishes whatsoever? *Parker Ch. J.* delivered the opinion of the court: Before the statute, a certificate was only an evidence of a private undertaking between the parties, in the nature of a contract; but now it is a solemn acknowledgment, like the conveyance of a fine; and thereby the party is owned to be legally settled there; and as all other parishes on this certificate are bound to receive him, so the parish that certifies is concluded as to all other parishes. 2 *Salk.* 535. *Foley* 177.

T. 5 G. *New Windsor and White Waltham.* The pauper being settled in *White Waltham*, where he had lived for two years with a woman who was reputed his wife, went with a certificate from *White Waltham* owning them as husband and wife into the parish of *New Windsor*, where they had six children. The man dies, and the woman swearing they had never been married, the justices adjudge the children to be bastards, and settled in *New Windsor* where they were born. But by the court, the certificate is conclusive to the parish of *White Waltham*, and they are not to be admitted to dispute the validity of the marriage, and therefore the six children, being actually chargeable to *New Windsor*, must be sent to *White Waltham*. *Str.* 186.

T. 19 G. 2. *Headcorn and Maidstone.* The parish of *Maidstone* gave a certificate to *Headcorn*, acknowledging *Richard Burden*, and *Mary* his wife, and their four children, to be legally settled at *Maidstone*. Afterwards it appeared, that *Mary* was not his lawful wife, but that he had a former wife then living. Upon which, *Maidstone* acknowledged the settlement of the real and true wife, but not of the said *Mary* and her children; and pleaded that it would be hard that they should be forced to

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to take two wives, and different children. But by the court, The parish that certifies must take care for whom they certify; and the certificate is conclusive. The parish of *Maidstone* have by this certificate expressly acknowledged the said *Mary* to be their legal inhabitant; and the parish of *Headcorn* were thereupon bound to receive her. Therefore when she becomes chargeable, the parish of *Maidstone* are bound to provide for her and her children by *Burden*. *Maidstone* say they were deceived: But it was their own fault or folly if they were so; and they deceived *Headcorn*: Therefore they ought to suffer, and not *Headcorn*. *See* C. V. 2. 200. *Str.* 1233. *Burrow's Settl. Cas.* 253.

VI. A certificate is not binding against a subsequent settlement.

As in the case of *Harrison and Lewis*. A certificate promising to receive the persons whenever they become chargeable, is not conclusive against a settlement obtained afterwards; for tho' it be according to the agreement between the parishes, yet a private agreement in this respect shall not alter the law. 3 *Salk.* 253.

VII. A certificate is not restrictive from gaining a settlement in a third parish.

M. 14 G. 2. *Petham and Dymchurch*. The pauper was bound apprentice to a certificate man in *Tenterden*, and after living with him there two years, was by him assigned over to a parishioner of *Lidd*, with whom he inhabited and served for the remainder of the seven years. And the court were all of opinion, that such assignment being good as to the purpose of a settlement, the apprentice gained a settlement in *Lidd* the uncertificated parish. *Str.* 1147.

In the aforesaid case of *Sherborne and Thornford*, *E.* 15 G. 2. it was observed by Mr. justice *Denison* (to which all the court agreed) that a certificate provides for the security of that parish only into which the certificate persons came to reside by virtue of such certificate; but doth not exclude a certificate person from gaining a settlement in another parish, in the same manner as any other person may do. *Burrow's Settl. Cas.* 186.

H. 21 G. 2. *Silton and Wincanton*. The father and mother of *John Milbourn* the pauper came from *Silton* with a certificate to *Wincanton*. The said pauper was afterwards

afterwards born in *Wincanton*, and at 12 years of age was bound out by the parish of *Silton* apprentice to a taylor at *Horsington* for 8 years, and served him there. The question was, whether the son of a certificate person, born in the parish to which his father came by certificate, and bound apprentice and serving an apprenticeship to a master in a third parish, gains a settlement in the third parish by such apprenticeship? By the court, The pauper in this case was a person at large, as to every other parish except *Wincanton* to whom the certificate was delivered; and therefore he gained a settlement at *Horsington*. Burrow's Settl. Cases 269.

T. 28 G. 2. *High and low Bishopside* and *Dacre cum Buerley*. Jonathan Joy, a taylor, being settled in *Menwith cum Darley*, came from thence with a certificate to the township of *High and low Bishopside*, where he resided for some years. Afterwards, he purchased a freehold house, for the sum of 10 l. in the township of *Dacre cum Buerley*: Whereupon he left *Bishopside* and went to inhabit in *Dacre cum Buerley*, to which place he carried his certificate, and delivered it to the proper officer there. During his residence at *Dacre cum Buerley*, John Thackrey the pauper was bound to him as an apprentice by indenture for 7 years; and served his apprenticeship accordingly with his said master, who all the time inhabited in his said house in the township of *Dacre cum Buerley*. The question was, whether he gained a settlement in *Dacre* by such apprenticeship. It was argued on the one side that he could not; for his master himself in that case resided under the certificate which he brought with him when he came from *Bishopside*, and consequently the apprentice could not gain a settlement with him at *Dacre*. Unto which it was answered, that the master did not reside as a certificate person at *Dacre*, because living upon his own estate there he needed to have delivered no certificate, and the certificate which he did deliver could have no effect at *Dacre*, as it had before been delivered to *Bishopside*, which they ought to have kept for their own protection; and if a certificate had been necessary, he ought to have produced another certificate. And of this opinion was the court, and held that the apprentice gained a settlement at *Dacre*. Burrow's Settl. Cas. 381.

T. 28 G. 2. *Horsley and Hollingsclough*. Horsley gave a certificate to Abraham Cope and his family, who went with it to *Hollingsclough*, where his son the pauper was born.

born. The pauper at 12 years of age went to *Peck*, and was hired and served for a year there; and then returned to *Hollingsclough*. The question upon this case was, whether the son of a certificate person, born in the parish to which his parent came by certificate, could gain a settlement in a third parish by a hiring and service for a year. And the court were clear that this gained a settlement in the third parish; and that the case of *Silton* and *Wincanton* was in point, only with this immaterial difference, that there the son's settlement was gained by apprenticeship, and here by a hiring and service. *Burrow's Settl. Caf.* 385.

E. 29 G. 2 St. Peter's in Nottingham and Wilford. The parish of *Beston* gave a certificate with one *Trentham* to *St. Peter's*. The certificate man took the pauper *John Wright* to be his apprentice, and the pauper served him some considerable time in *St. Peter's*. Afterwards, *Trentham* the master removed to *St. Mary's*, where the apprentice served him about a year. The two justices and the sessions were of opinion, that the certificate extended to *St. Mary's*, though only directed to *St. Peter's*; and consequently, that the apprentice gained no settlement in *St. Mary's*. It was moved to quash the orders of the justices, because their opinion was contrary to the determination in the case of *High and low Bishopside*, viz. that a certificate extends to no other parish, but that only to which it is given: And an apprentice gains his settlement by the last 40 days service; which, in the present case, was at *St. Mary's*, to which parish the master was not certificated. And the counsel on the other side gave it up, as being exactly the same point with the cited case of *High and low Bishopside*. *Burrow's Settl. Caf.* 391.

T. 30 & 31 G. 2. Great Torrington and Bideford. By a certificate from *Lancrafts*, *Mary Bray* came to *Bideford*, and inhabited there some years. Then she was bound apprentice by the officers of the parish of *Lancrafts*, and lived under the indenture, at *Great Torrington*, for several years. After the expiration of the apprenticeship, she hired for a year, and served that year in *Bideford*. The question was, whether by this hiring and service she gained a settlement at *Bideford*, to which place she had come by certificate? And it was adjudged. (the point being clearly given up, as in the former case), that having served an apprenticeship in a third parish, she was become quite clear of the certificate, and therefore was as much

much at liberty to gain a new settlement in *Bideford*, as any uncertificated person could be. *Burrow, Mansfield. 357. Burrow's Settl. Cas. 428.*

And the like was adjudged in the same term, in the case of *Keynsham* and *Hanham*. *Burrow, Mansfield. 358. Burrow's Settl. Cas. 429.*

VIII. A certificate is discharged by an estate of a man's own.

Altho' the statute of the 9 & 10 *W.* says, that no person who shall come into any parish by certificate, shall be adjudged by any act to have gained a settlement there, unless he shall really and *bona fide* take a lease of a tenement of 10 l. a year, or execute some annual office in the parish; yet it hath always been holden, that a man may not be removed from his own, whether it come to him by descent, devise, or purchase; and continuing thereon 40 days, he shall thereby gain a settlement, provided that in case of purchase the consideration *bona fide* paid amount to the sum of 30 l. as will appear fully from several cases hereafter following.

IX. A certificate is discharged by a removal.

H. 28 G. 2. Sudbury and Uttoxeter. Thomas Bladon, being settled at *Sudbury*, came by certificate with his wife and children to *Uttoxeter*. *Thomas* died there, and his wife and children, remaining at *Uttoxeter* under the certificate, became chargeable, and were removed and sent back to *Sudbury*. In about a year after, *John Bladon*, one of the said children, was bound apprentice in the parish of *Uttoxeter*, and served out his time there. The question was, whether by such apprenticeship he gained a settlement at *Uttoxeter*. By *Ryder Ch. J.* and the court: The removal in this case to *Sudbury* did restore the pauper to a new right of gaining a settlement; for the certificate is as it were *functus officio*, and is discharged by the order of removal. It can have its effect but once; and after the removal back, it is totally at an end; and the certificate person is restored as fully to the capacity of gaining a settlement, as if there had been no certificate at all. The law is so far from looking upon a certificate as continuing after an order of removal; that the pauper cannot return to the place from which he was removed, without incurring a penalty. And it was adjudged

judged that the pauper gained a settlement at *Uttoxeter*.
Burrow's Settl. Cases 373.

X. Whether a certificate is discharged by the pauper's deserting it.

H. 24 G. 2 Sowerby and Halifax. The pauper's father came with a certificate from *Halifax* to *Sowerby*, and during his residence there under that certificate the pauper was born. The father died. The widow and the pauper her son went back voluntarily to *Halifax*. After some time, they went with a new certificate from *Halifax* to another place; and having resided under the new certificate for some time, they returned again to *Halifax*. After which, the pauper was bound apprentice in the parish of *Sowerby* to which the first certificate was given, and there served out his apprenticeship. And the sessions being of opinion that the pauper, at the time of his being bound apprentice as aforesaid, was not, nor ought to be considered as a person who came into the township of *Sowerby* aforesaid by certificate, he not having lived or resided within the said township during the space of nine years and upwards next before the time of his being bound apprentice as aforesaid, and that therefore he obtained a settlement by his apprenticeship in *Sowerby* aforesaid, did therefore confirm the order of the two justices for sending him to *Sowerby*. It was moved to quash these orders of the justices. But it appearing likewise upon the state of the case that the indenture was not stamped, the orders were quashed upon that consideration, without determining how far the desertion of a certificate shall destroy the effect of it. *Burrow's Settl. Cas.* 408.

T. 29 & 30 G. 2. Taunton St. Mary Magdalen and Taunton St. James's. Robert Bagg, the grandfather of the pauper, came with a certificate from *Taunton St. James's* to *Taunton St. Mary Magdalen's*. Afterwards he went back into the parish of *Taunton St. James's*, and there had Robert his son, the father of the present pauper. And afterwards Robert, the pauper's father married in *Taunton St. James's*, and went and lived with his wife and family, in a house in the said parish of *Taunton St. James's*, apart from his father; and had issue Robert the pauper, born in *Taunton St. James's*. Robert the grandfather died in *Taunton St. James's*. Then Robert the father died. And Robert the pauper was bound an apprentice by the parish of *Taunton St. James's*, into the parish of
Taunton

Taunton St. Mary Magdalen; and there served his apprenticeship. It was urged, that by virtue of the certificate given with his grandfather to the said parish of *Taunton St. Mary Magdalen*, the said apprentice gained no settlement in *Taunton St. Mary Magdalen*, but continued settled in the parish of *Taunton St. James's*, which had given the certificate. But the court (without going into the question whether the certificate act extends to grandchildren; or whether the son of this certificate man was emancipated from his father's family or not, as these points were not necessary to be discussed in this case) delivered their opinion, that the certificate itself was of no force, at the time of the grandson's being put apprentice in *Taunton St. Mary Magdalen's*, but was then totally at an end. For in so long a course of time, which was 54 years after granting the certificate, and after such a desertion, it was reasonable to conclude that there was an end of it. It was absolutely waved and deserted. And the father and grandfather of this pauper could not have gone to *St. Mary Magdalen's* again without a new certificate. It is a good deal like the case of *Uttoxeter*, where the certificate was considered as *functus officio*, and as if it had never at all existed; being in that case totally at an end, as being satisfied, and having had its full and whole effect, by the removal of the paupers (under an order of justices indeed) to the parish who had given that certificate. And in the present case, the certificate being at an end, the apprenticeship of *Robert Bagg* the pauper will have just the same effect, as if no such certificate had ever been given at all, or were any ingredient in the case; that is to say, the apprentice is settled in *Taunton St. Mary Magdalen's*. *Burrow's Settl. Caf. 402.*

But where there is not such length of time, it seemeth, that merely going away, and not returning immediately, will not vacate a certificate. As in the case of *Spotland* and *Castleton*, *H. 5 G. 3.* The pauper *John Hamer* was bound apprentice to a certificate man at *Castleton*, and served his master at *Castleton* for some years. Then he removed with his master to *Spotland*, where he served him 40 days and upwards; and then was married to a young woman whose parents lived in *Castleton*; and till the expiration of the apprenticeship, which was upwards of half a year, the apprentice worked in the day time with his master in *Spotland*, but went and lodged with his wife at her parents house at *Castleton*. It seem-

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ed to be agreed by the court (independently of a certificate) that wherever the servant or apprentice lodges, there is his settlement. And in this case, it was urged, that the certificate was out of the question. For by the apprentice residing with his master 40 days in *Spotland*, he had gained a settlement there; as they did not reside in *Spotland* under the certificate. Consequently, he came back from *Spotland* to *Casleton* free from the certificate, just as if there had been no certificate at all. And by lodging there above 40 days, he gained a settlement there, subsequent to that he had gained in *Spotland*. On the other hand, it was argued, that the certificate was still subsisting, and the master's removal to *Spotland* was voluntary, and not under any order of removal. The master is not stated to have gained any settlement in *Spotland*. So that he continued a certificate man to *Casleton*; and the apprentice was part of his family. By the court: The master, who was a certificate man at *Casleton*, gained no new settlement in *Spotland*; and the pauper still remained an apprentice to this certificate man. The master may still go back to *Casleton*, the parish to which he was certificated. Indeed, it hath been determined, that if a certificate person goes to another parish, and becomes chargeable to it, and is by an order of justices removed from thence to the parish which gave the certificate, then the certificate is at an end, it is satisfied, it is *functus officio*, and it can have its effect but once. But here the removal is voluntary, not by force. The certificate subsists. And the apprentice remains part of his master's family. He was so at *Spotland*; and all along continued to be so. The certificate act says, that the apprentice shall not gain a settlement in the parish to which his master came by certificate. But as this apprentice hath gained an intermediate settlement, he ought to be sent to that settlement which he hath intermediately gained. And the court were unanimous, that his settlement was at *Spotland*. Burrow's Settl. Cas. 527.

iii. Of settlements by birth; viz. of bastards, and others.

i. Of bastards.

Note; It is not in this place questioned, who shall or shall not be deemed a bastard; but the settlement only is considered

considered of such as are first supposed to be bastards: other matters relating to them, as concerning their filiation, and maintenance, and the like, are treated of under the title *Bastards*.

How far bastards
are to be settled
where born.

A bastard child is prima facie settled where born: And this was the ancient genuine settlement; and a person could have no other, until he had resided for a certain time, as is aforesaid.

But this rule admits of divers exceptions; which are as follows:

Bastard born in a
place by collusion.

(1) If a woman comes into a place by privity and collusion of the officers where she belongs, and is there delivered of a bastard; such bastard gains no settlement, notwithstanding its birth. *Cases of S. 66.*

And in the case of *Masters and Child, H. 10 W.* It was ruled, that if a woman big with child of a bastard, and settled in one parish, is persuaded to go into another, and there be delivered; this fraud will make the parish chargeable where the mother was settled, though the child was not born there: But if a woman, with child of a bastard, come accidentally into one parish, and is persuaded by some of the parishioners to go into another parish, which she doth, and there is delivered, this shall not charge that parish which persuaded her. *3 Salk. 66.*

Bastard born after
the order of
removal is made
out.

(2) Also, If a bastard is born under an order of removal, and before the mother can be sent to her place of settlement, being hindered by water or otherwise; such bastard shall not be settled where so born, but at the mother's settlement. *M. 10 An. Ickleford and Great Milton. Sess. C. V. 1. 33. Cases of S. 66.*

Bastard born in
removing.

(3) So also, If the officers are carrying a woman by virtue of an order of removal, and she be delivered on the road *in transitu*; the bastard shall go with the mother where she is going, by virtue of the order, notwithstanding the birth. *E. 10 An. Jane Grey's case. Cas. of S. 66.*

Bastard born after
the removal,
and before the
appeal.

(4) Again, In the case of *Much-Waltham and Peram, M. 8 W.* A woman big with a bastard child was removed by order of two justices from *Much-Waltham* to *Peram*. Before the next sessions, she was delivered at *Peram* of a bastard child. At the sessions, *Peram* appealed, and the justices adjudged the woman to be last settled at *Much-Waltham*, and ordered her to be sent back thither. After which, an order was made, to settle the child at *Peram*; which it was moved to quash, because though regularly bastards must be maintained where born, yet in this case, where

where there seems to be a contrivance it shall not be so. The court seemed to agree to this, and a rule was made to shew cause, but none was shewed. 2 Salk. 474.

And further, In the case of *Westbury* and *Coston*, H. 2 An. A woman big with child was removed by order of the justices from *Westbury* to *Coston*: And, pending the order, before the next quarter sessions, she was delivered of a bastard child. *Coston* appealed, and thereupon the order of the two justices was reversed; but the child was sent back to *Coston* as the place of its birth. But by the court: The birth at *Coston*, did not settle the child there, because it was under an illegal order procured by *Westbury*, which order being reversed, the matter is no more than this, that they unjustly procured the woman to go thither. And Holt Ch. J. said, Though here be no fraud in this case, yet here is a wrongful removal, and the reversal makes all void *ab initio*: Fraud, or not fraud, is not material in this case; but the settlement of the child depends upon the removal, for if that was wrong, they shall not ease themselves by it. 1 Salk. 121: 2 Salk. 532.

(5) So also, By the statute of the 17 G. 2. c. 5. Where any woman, wandering and begging, shall be delivered of a child, in any parish or place, to which she doth not belong, and thereby becometh chargeable to the same; the churchwardens or overseers may detain her, till they can safely convey her to a justice of the peace. And if such woman shall be detained and conveyed to a justice as aforesaid, the child of which she is delivered, if a bastard, shall not be settled in the place where so born, nor be sent thither by a vagrant pass; but the settlement of such woman shall be deemed the settlement of such child. f. 25.

Bastard born in a state of vagrancy.

(6) A child born in the house of correction, shall be sent to the place of its mother's settlement. 2 Burr. 358.

Bastard born in prison.

And in the case of *Elting* and the county gaol of *Hertfordshire*, H. 2 G. A bastard was born in the county gaol: Resolved, that the settlement was with the mother. *Seff. C. V.* 1. 94.

(7) T. 5 G. *New Windsor* and *White Waltham*. The parish of *White Waltham* gave a certificate to a man and a woman supposed to be his wife, with which they went into the parish of *New Windsor*, and had there six children. Afterwards, the woman swearing they were never married, the question was, whether (upon that supposition) the children, as bastards, should be settled in

Bastard born under a certificate.

the parish where they were born, or in the parish which gave the certificate with their father and mother? And by the court, There is no doubt but the bastard of a certificate person is settled in the place of his birth, for he is not such an issue as will follow the settlement of his father or mother, neither is such bastard *his* or *her* child within the intention of the statute, so as to be sent back with the parent. *Str.* 186.

But in this case the point turned chiefly upon the certificate's being conclusive (for as the parish had given a certificate with the man and woman, as husband and wife, the court held that they were not afterwards to be admitted to dispute the validity of such marriage, but adjudged the children to be settled in the parish granting the certificate); Therefore in the case of *Helton* and *Lidlinch*, *T.* 15 *G.* 2. the matter came under debate again; which was thus: A single woman went into the parish of *Lidlinch*, with a certificate from *Helton*; lived there a year, and then had a bastard child. The sole question was, Whether the child should be settled in the parish where born, or in the parish giving the certificate? By the court: The certificate must be taken to be good, and all fraud to be laid out of this case, it being a year that she dwelt in the parish, before she was delivered of the child; and wherever this court, in determining a settlement, adjudges upon the point of fraud, that fraud must be expressly stated; for as fraud is odious, it is never to be presumed. The cases hitherto adjudged as to this point, have either depended on point of fraud, or an illegal removal. So where the child is born in a gaol, he shall be settled in the parish where his mother is; for she shall be construed to be in custody of the law, and in all other respects a parishioner. But the present case stands intirely on the 8 & 9 *W.* which for the encouragement of labour and industry, gave power of removing persons by certificate, which certificate obliges the parish to whom given to receive and continue them in that parish, till they become actually chargeable, and then such person is to be removed, together with his or her family, and in another place, with his or her children, to the place from whence the certificate was brought. The question then is, Whether the bastard is included under the words *family* or *children*? And we take it he is not: for the law takes no notice of bastard children, they are *filii nullius*, *filii populi*, and are *prima facie* settled where born;

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T. 19 & 20 G. 2. *Wyke and Hipperholm cum Brighouse.*
Two justices made an order for the removal of *John Catton* otherwise *Speight*, being a bastard, from *Wyke* to *Hipperholm* the place of his birth. Upon appeal, the sessions quashed that order. The case was: *Sarah Catton*, mother of the pauper, came on the 25th of March by certificate from *Shelfe* to *Hipperholm*, being then pregnant with a bastard child, namely, the said *John Catton* otherwise *Speight* the pauper; and was afterwards, in April following, delivered of him at *Hipperholm*. The sessions, being of opinion that the said *John Catton* the pauper by reason of the said certificate, did not gain a settlement in *Hipperholm* where he was born a bastard as aforesaid, discharge the original order. The certificate itself was returned by the *certiorari*, which undertook that *Shelfe* should provide for her and her child, whenever they should become chargeable. It was moved to quash this order of sessions, upon this objection, that the justices at the sessions had mistaken the law; in support whereof was cited the case of *Helton* and *Lidlinch*. On a rule to shew cause, the counsel on the other side insisted, that *Shelfe* was the last legal place of settlement of the pauper. And they argued that this case is clearly distinguishable from that of *Helton* and *Lidlinch*. For here the woman is stated to be then pregnant with a bastard child, and the certificate expressly undertakes to provide for her and her child: so that *Shelfe* plainly had this very child in contemplation, no other child being named or hinted at. Unto which it was answered, That by the express resolution in the case of *Lidlinch*, a bastard of a certificate woman is settled where born; and fraud shall never be presumed, where it is not stated. The question therefore is, Whether the unborn bastard is to be considered as certificated. 'Tis true, a certificate is conclusive against the parish who gives it: But that is only in such points as are included in the certificate. This certificate, undertaking to provide for her and her child, must mean a child in being. If she had no other child, they should have stated the matter specially.—Lord chief justice *Lee* and Mr. justice *Wright* agreed, that they must take the child referred to by the certificate to be a legitimate child then in being. And Mr. justice *Foster* observed (to which observation the other two justices agreed), that it did not at all appear, that the parish

who gave the certificate *knew* that the woman was then with child. And he added, that there were many instances where women were near their time, without being known to be so. The counsel for *Hipperholm* proposed, that it should go back to the sessions to be more fully *sa*ed. But their opponents said, and the court agreed, that could not be done without consent. And the counsel for *Wyke* refusing to consent, the court were of opinion that the rule must be made absolute. And the order of sessions was quashed, and the original order affirmed. *Barrow's Settl. Cas.* 264.

[If the certificate had undertaken to provide for the child she was then pregnant with, it might have been further considerable, how far such obligation was binding upon the parish from whence the certificate came. The parish officers could not certify that the child unborn was an inhabitant legally settled within their parish, for that would be absurd; and to promise to provide for a person who was not, and possibly never might be settled with them, is a matter out of the extent of their jurisdiction.]

Bastard not to be removed whilst a nurse child.

(8) Hitherto concerning the settlement of a bastard child: But notwithstanding the child's settlement, yet nevertheless if the mother and the child have different settlements, it seemeth that the bastard child, even as all other children, shall go with the mother for nurture until the age of seven years, and be maintained at the charge of the parish where the mother is settled, as a necessary appendage of the mother, and inseparable from her: for there doth not seem to be any law to force the child from the mother, or to compel the parish where it was born to maintain it whilst it is out of their parish.

As to its being inseparable from the mother, the following case happened, *M. 3 G. 2. Skeffreth and Walford*. The order was, to remove a woman to her settlement; and her bastard child, of two years of age to another parish at a distance from the mother, being the place of its birth. It was objected, that the child being a nurse child, they cannot separate it from the mother, by reason of the care necessary to nurture so very young a child; which none can be supposed so fit to administer as the mother of it; and therefore it should have been sent with her to the place of her settlement. And it was quashed by the court for that reason. *Seff. C. V. 2. 90.*

But altho' the child may not be separated from the mother, yet if she voluntarily desert it, it seemeth that the cause

cause of nurture then ceaseth, and that then it may be sent to its place of settlement.

(9) *E. 8 G. 2. St. Peter's and Old Swinford.* Two justices remove *Joseph* the son of *Joseph Haighington* from *St. Peter's* to *Old Swinford*, as a bastard born there on the body of *Hannah Aske*. On appeal, the sessions quash the order, and state the case specially: That *Joseph Haighington*, the father, gave evidence in court, that for 7 years together, he travelled with the said *Hannah Aske* as wandering persons from place to place, till the death of the said *Hannah Aske*, which was about 15 weeks since; and that during all that time they cohabited and lay together as man and wife; and it did not appear, that the marriage was ever questioned in the lifetime of the said *Hannah*: That during the time that he and the said *Hannah* did so cohabit as man and wife, she was delivered of three children; that the said *Joseph*, one of them, who was the person removed by the said order, was born in the said parish of *Old Swinford*: That the said *Joseph* and the other two children were reputed as his children, and baptized as the legitimate children of him and the said *Hannah*: That he and the said *Hannah Aske* were never married. And it appearing to the sessions, upon the evidence of the said *Joseph Haighington* that the said *Joseph* the infant was born during the time that the said *Joseph* and *Hannah* did cohabit and lie together and were reputed as husband and wife, and there being no other evidence, they were of opinion that the evidence of the said *Joseph Haighington* could not support the order, so as to bastardize the said *Joseph* the infant removed. And in support of the order of sessions it was observed, that this man could not be a proper witness in the case; for no body can be adjudged a bastard without the evidence of the woman. But by lord *Hardwicke* Ch. J. There is no ground to support the order of sessions. It is an apparent fact, that this man and this woman were never married. And what is there to make him an incompetent witness. It was an objection to an order of bastardy two terms ago, *K. v. Willey*, that it was founded upon the evidence of a married woman, which ought not to be admitted to discharge her husband. But this man doth not swear to discharge himself: For whether he be the legitimate, or only the natural father of the child, he is equally bound to maintain it. *Burrow's Settl. Cas.*

Evidence of bastardy after the mother's death.

2. Of legitimate children.

How far legitimate children shall be settled where born.

In the case of *Rickmansworth* and *St. Giles's*; A child was ordered to be removed from the parish of *Rickmansworth* to the parish of *St. Giles*, as being the place of his birth, the place of his father's last legal settlement being not known: For where the father's place of last legal settlement of a legitimate child is not known, there the child may be sent to the place of its birth, as well as an illegitimate one. *Black. 246.*

H. 8 An. Cripplegate and *St. Saviour's*. A child of three years of age was removed from one of these parishes to the other, and it appeared in the order, that they removed him there, because he was born there, not having any other settlement. By the court; The father's settlement is the settlement of the children, when it can be found out; otherwise the birth of the child *prima facie* is the settlement of the child, until there is another settlement found out. So a bastard child's settlement is its birth, because it is *filius nullius*; so if they cannot find out the settlement of a legal father, the birth is a settlement of the child. If a child be dropt in a parish, they may remove him to the place of his birth, or where his father's settlement was; and the settlement by birth is only *quousque* they find the father's settlement; and if they never can find that, it is absolute upon them. *Foley 265.*

But here it is to be observed, that in the two cases abovementioned, the point was not in question, whether or no if the father had no settlement, yet if the mother had a settlement, such children should follow the mother's settlement, or should be sent to the place of their birth? And there will appear good opinions in the next course of settlements, that if the father hath no settlement as being a foreigner, or if the father's settlement is not known, yet if the mother hath a settlement, the children in such case shall not be sent to the place of their birth, but to the place of their mother's settlement: But the rule intended to be drawn from these cases, which is sufficient for this place, and which the cases will well bear, is no more than this, that the place of the birth of a legitimate child is the settlement of it, until another settlement be found out.

By the 13 G. 2. c. 29. for confirming and enlarging the powers given by charter to the governors and guardians of the hospital for the maintenance and education of exposed and deserted young children, it is provided, that no child,

nurse,

nurse, or servant, received or employed in such hospital, shall by virtue thereof gain any settlement in the parish where such hospital shall be situate; and consequently the settlement of *foundlings* is not different from that of all other persons: that is, if they are legitimate children, they shall follow their father's settlement, if known; if not, then their mother's settlement; if neither of these is known, or if they are bastards, they shall be settled where they were born; if that cannot be known, which is properly the case of a *foundling*, this seemeth to fall under the general rule, that every person shall be maintained and provided for in the place where he happens to be, until a settlement can be found; for in a christian civilized country, no person ought to be suffered to perish merely for want of necessaries. Only, in the present case, the act takes such children off the parish, and leaves them to the provision of the hospital,

iv. Of the settlement of children with their parents.

1. The birth of legitimate children doth not give them a settlement, except where the settlement of their father and mother is not known, and then only till it is known. *Foley 269.*

Settlement of a legitimate child with the parents.

2. Formerly it was held, that a child shall continue with its parents as a nurse child, until it shall be 8 years of age, during which time it shall not be deemed capable of gaining a settlement in its own right; but by the later resolutions it seems to be agreed, that a legitimate child shall necessarily follow the settlement of its parents as a nurse child or as part of the family, only until it shall be 7 years of age; and that after that age it shall not be removed as part of the father's family, but with an adjudication of the place of its own last legal settlement, as being deemed capable at that age of having gained a settlement of its own. But it seemeth not difficult to determine with exact certainty, at what age a child may have acquired a settlement of its own, distinct from the parents settlement. For by the 5 *El. c. 5. f. 12.* A child of seven years of age may be bound apprentice to a shipwright, fisherman, owner of a ship, or other person using the trade of the seas; and by the vagrant act of the 17 *G. 2.* a vagrant's child of that age may by the justices be put out an apprentice: And so soon as he shall have resided and lodged in a parish for 40 days under the indenture, he will have thereby gained a settlement. So that the precise time, when a person may have gained a settlement

At what age a child may gain a settlement distinct from the parents.

How far children
shall follow the
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settlement in his own right, is at the age of seven years and 40 days.

3. *E. 10 An. Q. and St. Giles's.* Order to remove an infant to the parish of *St. Giles's*; because it appeared, that though the father was settled at another place, yet the child was born at *St. Giles*. Quashed by the court; for that the place of the settlement of the child is with the father, and not the place where the child was born. *Seff. C. V. 1. 18.*

H. 10 G. St. Giles's Reading and Eversly Blackwater. It was ruled by all the court upon argument, that where a father gains a second settlement after the birth of his child, that settlement is immediately communicated to the child. And a child may be sent to the place of his father's settlement, without ever having been there before. *Seff. C. V. 2. 112. Str. 580. L. Raym. 1332.*

M. 12 G. 2. Sowton and Sydbury. The question was, whether the children, being above the age of nurture, shall be removed with the father to the father's settlement, where the children had never inhabited? By *Lee Ch. J.* In the case of *Eversly Blackwater*, the court were of opinion, that a child might be sent to the settlement of his father, though it had never been there before, contrary to an opinion of *L. Parker* in a former case. And he said the true distinction, I think, is, that where children have gained no settlement, but continue part of their father's family, they shall follow their father's settlement. *Seff. C. V. 2. 150. Andr. 345.*

T. 2 An. Comner and Milton. A man settled at *Comner*, and having several children born in that parish, afterwards removed to *Milton* with his children, and gained a settlement there; and becoming very poor, his children born in *Comner*, were by an order of two justices sent to *Comner*, viz. those that were under seven years old; the justices apprehending, that the place of their birth was the place of their lawful settlement. And this order being removed into the king's bench by certiorari, it was insisted to maintain the order, that the children had gained a settlement in *Comner* by birth, which was not altered or defeated by any subsequent act of their father in gaining a settlement at *Milton*; for his children were with him there only as nurse children, and his settlement shall not be the settlement of the children. But by *Holt Ch. J.* The place where a bastard is born, is the place of his settlement, unless there is some trick to charge the parish; but the place where legitimate children are born, is

not

not the place of their settlement, for let that be where it will, the children are settled where their parents are settled; as for instance, if the father is settled in the parish of *H.* but goes to work in the parish of *B.* and before he gains any settlement there, has a son born in the parish of *B.* and then dies; this child may be sent to the parish of *H.* for it is not the birth, but the settlement of the father, that makes the settlement of his child; and if the father hath gained a new settlement for himself, he hath likewise gained a new settlement for his children, who do not go with him to his new settlement as nurse children, but as part of his family. 2 *Salk.* 528. 3 *Salk.* 259.

4. *T. 7 G. Eastwoodhay and Westwoodhay.* Upon appeal from an order of two justices, for the removal of *Robert Baker*, from the parish of *Westwoodhay* to the parish of *Eastwoodhay*, the sessions state the fact specially for the opinion of the court: That forty years since, *Thomas Baker*, the father of this *Robert*, was seised in fee of a freehold estate in the parish of *Hampstead Marshal*, where he lived till the year 1697, and had this son *Robert*, who was at that time eight years old: That in 1697, *Thomas* the father and all his family removed to *Chevely*, where he rented a tenement of 20 l. a year, for two years: That in 1699, he purchased a copyhold estate of 11 l. a year in the parish of *Westwoodhay*, whither he removed with his son and servants, and served churchwarden and other parish offices, and paid taxes, and staid there till the year 1716: That in 1716, he purchased a cottage of 1 l. 12 s. 6 d. a year in *Eastwoodhay*, and went and lived upon it till his death: but *Robert* the son staid behind in *Westwoodhay*, where he married a wife, and has worked ever since on his own account, and that he is 30 years old. Upon the whole; the sessions confirmed the order of the two justices for his settlement at *Eastwoodhay*. It was moved to quash the order of sessions, for that the settlement of *Robert* the son is either at *Hampstead Marshal*, where he was born, and where he lived till eight years old; or if it should be carried so far, as that he gained a new settlement with the father, by removing with him as part of his family, according to the case of *Cumner and Milson*, yet that can carry him no farther than *Westwoodhay*, which is the last place to which he accompanied his father; but let the settlement be in either, it is not material now; the only question being, whether here is any settlement in *Eastwoodhay*, for which there is no colour.

On

Child emancipated from the father.

1002. (Settlement with the parents)

On the other hand, it was insisted, that let the son be of what age he will, he shall follow the settlement of the father, till he gains one by his own acquisition; and it appearing he had never done any thing to gain a settlement by act of his own, either in *Hampstead Marshal*, *Chevely*, or *Westwoodhay*, then he must follow the settlement of the father as well in *Eastwoodhay* as in any of the rest. *Pratt Ch. J.* The question is not, where this man and his family are settled, but whether there appears a settlement of him in *Eastwoodhay*? If he had gone thither with his father, as part of the family; possibly it might have been a settlement of him there: but by staying behind, he was divided from his father, and therefore there is no colour to make it a settlement in *Eastwoodhay*. I think his settlement is in *Westwoodhay*, which was the last place where he lived as part of the father's family. To which the rest of the court agreed: And the order was quashed. *Str.* 438.

E. 2 G. 2. *St. Michael's Coslany* in *Norwich*, and *St. Matthew's* in *Ipswich*. Two justices made an order, to remove *Edmund Williams*, *Anne* his wife, and *Edmund*, *Solomon*, and *Amy*, children of the said *Edmund* the father, from the parish of *St. Michael* in *Norwich*, to the parish of *St. Matthew* in *Ipswich*. Upon an appeal from this order, the sessions stated the matter specially, viz. That *Edmund Williams* the elder, father of *Edmund Williams* the father of the said children, was settled at *Shipton Mallet* in *Somersetshire*; and afterwards removed to *Bruton* in the said county, and had a writing given him from *Shipton Mallet*, acknowledging his legal settlement to be there; by virtue of which he continued at *Bruton* for 20 years, where *Edmund* the son was born; and that he continued there with his father till he was nineteen years of age, and was bred up to his father's business of a woolcomber. Then *Edmund* the son left his father, and came to *Norwich*, and there he married two wives; by the first he had *Edmund* the grandson; and ten years after his wife died. Then he married *Anne* his now wife; by whom he had *Solomon* and *Amy* two other children; since whose birth, about two years ago, *Edmund Williams* the grandfather gained a new settlement at *St. Matthew's, Ipswich*: But *Edmund* the son hath never lived with his father at *Ipswich*, or any where else, since he lived with him at *Bruton*. The question was, whether the persons removed, to wit, *Edmund* the second, his wife, and three children, should follow the settlement of the grandfather at *Ipswich*; or whether

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whether they should not be looked upon as separated from the grandfather's family, especially after so long an interval of time? Mr. J. Reynolds; I do not see how the father can gain a settlement for the son, so many years after the son has left him. Lord Ch. J. Raymond; I think it is odd, that an old man of sixty, who has left his father for 40 years, shall follow the settlement of his father, as oft as his father removes. In the case of young children it is otherwise; for they cannot be severed from their parents, because of nurture. And by the whole court: The reason why we enquire into the ages of children is, because if they are grown up, and above seven years old, they may gain a settlement by their own act; but it is almost a contradiction in terms to say, that a man who has left his father 40 years, shall follow the settlement of his father. *Sess. C. V. 2. 129. Str. 831.*

H. 21 G. 2. *Bugden and Amptbill.* John Green, father of Thomas Green the pauper, came by certificate from Royston to Amptbill. They remained together at Amptbill under the certificate, till Thomas the pauper came of age. Then Thomas the pauper, being upwards of 21 years of age, married in Amptbill, and left his father, and lived there with his wife and children distinct from his father, till removed by the present order. Three years after the marriage of Thomas, John the father removed from Amptbill to Bugden, and there gained a settlement: But Thomas the pauper never lived there. It was argued, that here was a good settlement of the pauper at Bugden, for that the last settlement of the father would be the legal settlement of the son, unless the son had gained a new settlement of his own. On the other hand, it was insisted, that as the son did not live with his father at Bugden, he could not gain any settlement there, being no part of his family; and the rather, because he had an independent and distinct family of his own at another place. And of that opinion was the court; who held, that the pauper ceased to be part of his father's family, upon his marrying and living separate and distinct from his father. *Burrow's Settle. Cas. 270.*

5. H. 10 G. St Giles's and Everfry Blackwater. Tho' Father dead. the place of the birth of a child, where the father hath no settlement, is the place of the settlement of the child; yet where the father hath gained a settlement, his children, though born in another parish, shall be looked on as settled at the place of their father's last legal settlement, and shall be removed thither, as well after the death of their

their father, if occasion requires, as in his lifetime, supposing they have gained no settlement of their own. *L. Raym.* 1332. *Str.* 580.

T. 8 W. K. and Luckington. Howel and his wife were settled at *Luckington*, and came to *St. Austin's*, and there a child was born. The father dies in the king's service. The question was, who shall keep the child? It was objected, that it was settled where born; for that they could not send it to the father, when he was dead. But by *Holt Ch. J.* The death of the father doth not alter the child's settlement. *Comb.* 380.

So if the father dies before the child is born; yet the child shall be settled where the father was settled before his death. *M. 5 An. Q. and Clifton, Viner. Settle. J.*

Father dead and
the mother a
widow.

6. *M. 1 G. St. George's and St. Katherine's.* A man settled in *St. Katherine's*, married, and had six children born there, and died. After his death, the widow goes into the parish of *St. George*, with her six children, and rents a house of 12l. a year, and lives in it with her children four months. The single question was, Whether the children should be settled where their father was last settled, or have a settlement with the mother in the parish of *St. George*? And the whole court were of opinion, that the six children were settled in the parish of *St. George*, where the mother's last settlement was. And by *Parker Chief Justice*, There is no distinction between the settlement of children with the father or mother; for they are as much her's as the father's, and nature obliges her, as much as the father to provide for them; so does the law; and every argument that holds for their settlement with the father, holds as to their settlement with the mother. The reason why children shall not gain a settlement, where the widow gains a settlement only by intermarriage, is, because it is then not her family, but her husband's; and she cannot give the children any sustenance without the husband's leave. But in this case, since she is equally punishable with her husband for deserting her children, and therefore could not leave them behind her, they must gain a settlement with her. *Foley* 254. *Seff. C. V.* 1. 69.

H. 13 G. Woodend and Paulspury. John Buncher was settled at *Woodend*, and died, leaving a widow and one daughter aged 14 years. The widow removed to *Paulspury*, into a messuage and tenement of her own for life, and took her daughter with her, and the daughter lived with her there two years. And the question was, Whether

the

the daughter gained a settlement at *Paulspury*? And it was adjudged that she did; because the mother being a widow, having gained a new settlement after her husband's death, the daughter gained a settlement also as part of her family. And there is no difference between a father's gaining a settlement, and a mother's, in such a case as this; for the mother is obliged to provide for her children after her husband's death, as the father was when living; and she could not leave this daughter behind her, neither could she be removed from her. *L. Raym. 1473. Fel. 256. Str. 746.*

T. 8 & 9 G. 2. Barton Turfe and Happisburgh. Thomas Man hired a farm of the yearly value of 100*l.* in *Barton Turfe*, which he occupied for about three years, and died there. After his death his widow removed from *Barton Turfe* to *Happisburgh*, and dwelt in a house and occupied lands there, of the yearly value of 4*l.* which were given to her by the will of her father. And *Deborah* her daughter, being then of the age of 13 years, went and lived with her mother as part of her family, for about a year and a half. By the court: The daughter gained a new settlement in *Happisburgh*, by living with her mother there, as part of her family, upon the mother's own. For a child may gain a settlement under its mother after the father's death, equally as under its father whilst alive. The mother's settlement has the same effect upon the child as the father's had. *Burrow's Settl. Cases. 49.*

And the like was held by the court in the case of *Oulton and Wells. M. 9 G. 2. Id. 64.*

7. M. 10 W. Wangford and Brandon. Three poor men of *Wangford* came into the parish of *Brandon*, and there married three poor widows of *Brandon*, who received relief from the said parish; each of which widows had children by their former husbands, some under 7, some above 7 years of age. It was holden, that the children did not gain a settlement in *Wangford*, nor were removeable thither, to charge that parish. As to the nurse children, they indeed might be sent thither for nurture only: Yet still the parish of *Brandon* must relieve them there, and not the parish of *Wangford*. But the children above the age of 7 years ought not to be removed at all; being settled inhabitants in the parish of *Brandon*. And the removal of the mother shall have no influence on the settlement of their children. *Carth. 449. 2 Salk. 483. Burrow's Settlm. Caf. 3.*

Father dead, and the mother married again.

In the aforesaid case of *Comner and Milton*, T. 2 An. It was said, that if after the death of the father, the mother marries again, to a husband who is settled in another parish; her children, such of them as are above 7 years old, shall not be removed; those under shall be removed, but that only for nurture, for they shall be kept at the charge of the other parish, where their father whilst living was settled; and to that parish they may be sent after 7 years old, as to the place of their lawful settlement; for this accidental settlement of their mother, which was only by the marriage with a second husband, and as she is now become one person with him, shall not gain a settlement for her children.

And in the case of *Woodend and Paulspury* aforesaid, H. 13 G. It was said, that if after the husband's death the wife shall marry again, to a man settled in another parish; her children by her former husband must go with her for nurture, yet they are no part of her second husband's family, and therefore gain no settlement thereby in the parish where the father in law is settled. L. Raym. 1473.

T. 6 & 7 G. 2. *St. Giles's in the Fields* and *St. Clement's*. *Jacob Maile*, the pauper, was an infant of 9 years of age. His father's settlement was not known: His mother's settlement before their marriage was known. His father died: His mother married a second husband, who had a settlement; and she, consequently, gained a new settlement by this second marriage. By the court: *Jacob Maile's* settlement is where his mother was last settled before her marriage with *Jacob's* father; the new gained settlement of his mother not being gained in her own right, but only in right of her second husband. And in this case the court agreed, that where children are sent with their mother for nurture, they are to be supported at the expence of the parish where their legal settlement is. *Burrow's Settl. Cases*. 2.

Note, The point in dispute in these cases was with respect to the settlement, and not with respect to the maintenance. And it doth not seem yet to have been clearly determined upon solemn argument, how far overseers of the poor shall be obliged to maintain any poor persons not residing in their own parish; except only in the case of persons residing under a certificate, and in that case it is their own voluntary act, for they might have refused to grant the certificate. In a general view, there is an apparent inconvenience, if the overseers may be compelled, upon

upon different occasions, to resort to several distant parts of the kingdom (as it may happen) to maintain their poor there. On the other hand there is an hardship in this present case of children going with their mother for nurture (which extends also to bastard children) until 7 years of age. But if a door is opened to admit these, others will follow, without a special act of parliament to prevent it: For at present the law seemeth to make no distinction. In practice, no instance occurreth of the overseers of the poor of one parish applying to the overseers of another parish, or to the justices respectively in the same or in different counties, for a relief towards the maintenance of such infants or other like casual poor. And even in their own proper parish, where there is a workhouse, the overseers are not obliged to maintain any persons but only in such workhouse.

8. *E. 8 G. 2. K. and St. Mary Berkhamsstead.* The father ran away, and the mother went and resided on an estate devised to her: One question was, whether the children could gain a settlement, by residing with the mother on such estate, where the father had never lived? And it was held by Lord *Hardwicke* Ch. J. That as it did not appear that the father was dead, the court must suppose him to be living; and in such case, the children could gain no settlement but what was derived from their father: But the matter was afterwards referred to the judges of assize. *Seff. C. V. 2. 182.*

Father run away, whether the child can gain a settlement with the mother.

9. *H. 12 G. Westram and Chidingstone.* An *Englishman*, whose settlement was not known, married, had a child, and ran away: The child was then nine years of age. By the court, the mother and child ought to be settled, where the mother was settled before marriage. *Foley 252.*

Father having no settlement, whether the child shall be settled with the mother.

M. 3 G. 2. St. Giles's and St. Margaret's. *Sarah Etherington*, with *Dorothy* her daughter aged five years, was removed from *St. Margaret's* to *St. Giles's*, as being the place of *Sarah's* last legal settlement before her marriage, she having married an *Irishman* who had no settlement: And it was adjudged, that *Dorothy* her daughter shall be settled with her mother in the parish of *St. Giles*, where her said mother's settlement was before marriage. *Fol. 251.*

T. 9 G. K. and St. Paul's, Shadwell. Resolved by *Eyre* and *Fortescue*, that where the father being a foreigner had no settlement, the children should have the benefit of their mother's settlement; for that her right should descend to them, and they should not be sent to the place of their birth. *Seff. C. V. 2. 113.*

H. 10 G. St. Giles's and Everſly Blackwater. It was held by the court, that where the father's ſettlement cannot be found, yet if the mother's can, the child ſhall have the benefit of that. *Seſſ. C. V. 2. 112.*

H. 28 G. 2. St. Botolph's without Biſhopsgate, and St. John's Wapping. A child of an *Irishman* having no ſettlement in *England*, and ſuppoſed to be on board a man of war in the *Weſt Indies*, and of his wife being an *Engliſhwoman*, was adjudged to go with the mother to the mother's ſettlement which ſhe had before marriage. *Burrow's Sett. Caſ. 367.*

M. 33 G. 2. St. Matthew's Bethnal Green, and St. Katherine's. A man, whoſe ſettlement was not known, married a woman who was ſettled in the precinct of *St. Katherine*. They had a ſon born in *Bethnal Green*: Which ſon married a woman ſettled in the pariſh of *St. Leonard Shoreditch*; and had ſeveral children by her. It was argued that theſe children ought to follow the acquired ſettlement of their mother; and not their father's, which was only a derivative one from their grandmother, who had married a *Frenchman* that had no ſettlement. But not allowed by the court; who ſaid, that there is no difference between an acquired and a derivative ſettlement. And the rule laid down was this; That the child's ſettlement follows that of its father, if the father's can be found; and that no re-ſource ſhall be had to the mother's ſettlement, till that of the father can be traced no further. And theſe children were adjudged to be ſettled at *St. Katherine's*. *Burrow, Manſfield. 870. Burrow's Sett. Caſ. 482.*

Father and mother, both dead, and the child's ſettlement not known.

10. A travelling woman, having a ſmall ſucking child upon her, was apprehended for felony, and ſent to the gaol, and was hanged: This child is to be ſent to the place of its birth, if it can be known; otherwiſe it muſt be ſent to the town where the mother was apprehended, becauſe that town ought not to have ſent the child to gaol, being no malefactor. *Read. Poor. Dal. 168.*

And where a child is firſt known to be, that pariſh muſt provide for it, till they find another: By *Holt Ch. J. Comb. 364, 372.*

v. Of ſettlement by apprenticeship.

The ſtatutes relating to the ſettlement of apprentices, are theſe following; which I will firſt exhibit together at one view, and then ſet forth the judgment of the court of king's bench upon the ſeveral parts thereof.

By

By the 13th & 14 C. 2. c. 12. On complaint by the church-wardens or overseers of the poor, within 40 days after any person shall come to settle in any parish, on any tenement under 10 l. a year; two justices (1 Q.) may remove him to the place where he was last legally settled, either as a native, householder, sojourner, apprentice, or servant, for the space of 40 days at the least. By the 1 J. 2. c. 17. The said 40 days shall be reckoned, not from the time of his coming to inhabit, but from the time of his delivering notice in writing. And by the 3 W. c. 11. Not from the time of delivering such notice, but from the time of the publication of such notice in the church.

Statutes concern-
ing the settle-
ment of appren-
tices.

But by the said act of the 3 W. If any person shall be bound an apprentice by indenture, and inhabit in any town or parish, such binding and inhabitation shall be adjudged a good settlement, though no such notice in writing be delivered and published. s. 8.

By the 12 An. st. 1. c. 18. If any person, after June 24. 1713. shall be an apprentice bound by indenture to any person residing under a certificate, in any parish, township, or place; and not afterwards having gained a legal settlement in such parish, township, or place; such apprentice, by virtue of such apprenticeship, indenture, or binding, shall not gain any settlement in such parish, township, or place; but every such apprentice shall have his settlement in such parish, township, or place, as if he had not been bound apprentice. s. 2.

And by the 9 & 10 W. c. 11. No person who shall come into any parish by a certificate, shall be adjudged by any act whatsoever to gain a settlement in such parish, unless he shall bona fide take a tenement of 10 l. a year, or execute an annual office in such parish. (And consequently not by apprenticeship.)

And by the 8 An. c. 9. and 9 An. c. 21. The master shall pay duty of 6 d. a pound, for 50 l. or under, and of 12 d. a pound for every pound above, of money, or of things not money according to their value, given with apprentices, and proportionably for greater or lesser sums: Except money given with parish apprentices, or out of publick charities. The sum given, to be written in the indenture in words at length. And besides the stamps before requisite, the indentures to be moreover stamped with another stamp, denoting the 6 d. or 12 d. a pound respectively. And if the sums are not truly inserted, or duties not paid or tendered, or indentures not stamped or tendered to be stamped within the time limited: Such indentures shall be void, and not available in any court or place, or to any purpose whatsoever.

And by the 31 G. 2. c. 11. *No person who shall have been bound an apprentice, by any deed, writing, or contract, not indented, being first legally stamped, shall be liable to be removed from the place where he was so bound and resident 40 days, by any order of removal, or order of sessions, by reason only of such writing not being indented.*

General exposition of the statutes.

1. The statute of the 13 & 14 C. 2. gives power to remove persons within the space of 40 days after they come to reside, but no power to remove them after the said 40 days; and consequently where the overseers have neglected to remove them for 40 days, they become afterwards *unremoveable*. The statutes of J. 2. and W. 3. do restrain such 40 days residence to be after notice in writing; but the latter clause of the statute of W. takes off that restriction with regard to apprentices; and the reason thereof is, because such notice would be to no purpose, for that the justices cannot upon the complaint of the overseers remove the apprentice from his master, that is to say, they cannot upon complaint of the overseers make void the indenture between the master and his apprentice, by which the apprentice is bound to live with his master, and the master is bound to keep him; for this can only be done upon the complaint of the master or apprentice: And continuing 40 days *unremoveable* without notice, is the same thing as continuing 40 days *removeable*, but not removed, after notice; and consequently the party hath gained a settlement. And it is possible that the apprentice may gain as many settlements as there are spaces of 40 days in the term of his apprenticeship; and where he serves the last 40 days, there is his last settlement: Consequently, he may gain a settlement long before his master shall gain one; as where his master's settlement shall arise from executing an annual office: Or, he may gain a settlement, whilst his master shall gain none, as when he resides upon a tenement under 10l. a year: And of consequence, the master may be removed, when the apprentice cannot be removed; and in such case the master shall be necessitated to apply to the justices, to compel the apprentice to go along with him.

Binding to be in writing.

2. E. 21 G. 2. *Stratton and Llewannick*. Two justices make an order to remove *Stephen Pethick* from *Llewannick* to *Stratton*. And upon appeal, the sessions confirm that order. The case was; *Stephen Pethick* the pauper, at his age of 14 years, was by his mother (being then a widow) placed as an apprentice with his brother in law *John Petherick*,

Petherick, by trade a cordwainer, in the parish of *Stratton*, for six years, to learn the said trade: But at the time of placing him as aforesaid, no indenture of apprenticeship was executed. His mother agreed to pay to his master 4 l. in hand, and 4 l. at the end of three years, and his master was to find him meat, drink, washing, and lodging during the said six years, and his mother was to find him cloaths during the said term. All which was performed accordingly. And the said *Stephen Pethick* believes, that in or about the last year of the said term, one part of an indenture was prepared, in order to bind him an apprentice to the said *John Petherick*, pursuant to the said contract or agreement: But he doth not remember that he executed the said part, or that it was executed by his mother and the said *John Petherick* or either of them, nor what is become of the said one part.—It was moved to quash these orders, for that all this doth not amount to such a binding as will gain a settlement, there being no indenture duly executed. The court seemed to think this exception too strong to be answered; and made a rule to shew cause why the orders should not be quashed: While rule was afterwards made absolute, without defence. And both orders were quashed. *Burrow's Settl. Cas.* 272.

H. 22 G. 2. Mawnan and Falmouth. It was moved to quash an order of two justices, and an order of sessions confirming the same, for removing *Jane Luckey* from *Falmouth* to *Mawnan*, upon the foundation of her having served an apprenticeship there. The objection was, that it was only by a parol binding; whereas the act requires that it be by indenture. On a rule to shew cause, the counsel on the other side acknowledged that it could not be supported. *Burr. Set. Cas.* 290.

3. By the several stamp acts, the indenture is to be written on parchment or paper stamped with a 2 s. 6 d. stamp; except indentures of parish apprentices, which are to be on a sixpenny stamp. And there are to be additional stamps (as aforesaid) in proportion to the value of money or other things given with the apprentice; except money given with parish apprentices or out of publick charities.

T. 17 & 18 G. 2. Llanvair Dyffryn Clwyd and Llanlidan. *John Edwards*, an infant, was by his father bound apprentice by indenture, but the indenture was not stamped. And it was ruled, that the indenture not being on stamped parchment or paper could not be given

in evidence at all, being absolutely void to all intents and purposes. *Burrow's Settl. Caf.* 236.

M. 16 G. 2. Holbeck and Gilderson. Peter Orange the pauper was bound a parish apprentice by indenture; but the indenture being produced, it appeared not to be stamped. It was objected, that by the 5 *W. c.* 21. which lays a duty of 6d. upon the indenture of a parish apprentice, it is enacted, that such indenture shall not be given in evidence, nor be available in any court, till the duty and also a penalty of 5l. be paid, and the parchment or paper stamped. And by the court, This indenture was necessary evidence to make out the proof of a binding by indenture, for that binding could be no otherwise proved but by the indenture; and the indenture being not stamped could not be admitted as evidence, and the justices ought to have paid no regard to it. *Burrow's Settl. Caf.* 198.

H. 4 G. 2. Cuerden and Leyland. On a special order of sessions it was stated, that the pauper was bound apprentice by indenture, and the master had 20s. paid him; that he served three years; but that the master never paid the duty of 6d. in the pound according to the 8 *An. c.* 9. *f.* 39. which says, that if the duty be not paid, the indenture shall be void to all intents and purposes whatsoever. The case was referred to *Fortescue J.* who went the circuit: And he held it a settlement, because the master had six months to pay the duty in; so that during those six months a settlement was gained; and it should not be in the power of the master to defeat it by matter *ex post facto*. And pursuant to this opinion, the sessions held it a settlement. But upon debate in the king's bench, the order was quashed; for they said, it was making the indenture good to one purpose, when the act of parliament had made it void to all intents and purposes whatsoever. And tho' it was a hard case, they could not break thro' the positive words of the act. *Str.* 903. *Seff. C. V.* 2. 134.

But upon payment of the duty and penalty, and a receipt thereof from the stamp office produced in evidence, the writing is made good. 8 *Mbd.* 365.

E. 13 G. 2. North Ouram and Ovenden. The mother of Samuel Spencer the pauper proposed to put him an apprentice to a master at North Ouram, who refused to take him because he wanted clothes; but proposed to take him, if they would clothe him, or give him money to clothe him with. The grandfather of the boy said he would do so. And it was thereupon agreed, that the grandfather

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grandfather should pay 30 s. to the master to clothe the boy withal, and that the master should take him as an apprentice. And in pursuance of that agreement, the master did lay out 30 s. in clothing for the boy. And afterwards an indenture was drawn and executed by the master and the said *Samuel Spencer* the apprentice: And the 30 s. agreed to be given and laid out as aforesaid was paid by the grandfather to the said master. And in consequence thereof, the said apprentice served his said master under such indenture and agreement for six years in *North Owrarn*. And in the said indenture a covenant was made and mentioned, for the said master to find clothes for the said apprentice during all the said term. But in the indenture no mention was made of the said sum of 30 s. so agreed to be given as aforesaid, neither was any duty paid for the same, nor was the said indenture stamped with the additional stamp required by the 8 *An. c. 9.* to denote such sum given with the apprentice. It was urged, that the apprentice hereby gained no settlement; both because the sum given with him was not inserted in the indenture in words at length, and also because the indenture was not stamped with the said additional stamp. By the court: The not inserting in words at length the full sum received or contracted for, subjects the master to a forfeiture, but doth not make the indenture void. And upon the state of the case, the master is to be looked upon in no other condition than if he had been a stranger employed as an agent by the grandfather to clothe the boy: And the grandfather was obliged to repay him, and did repay him. This clothing was before the binding: So that it amounts to no more than putting a boy apprentice ready clothed. It is not a premium received by the master. The statute means money given for the benefit of the master. But he has no benefit from this 30 s. He was not obliged to clothe the boy before he was his apprentice: And this agreement was executed before the indenture was sealed. And it was adjudged that the apprentice gained a settlement under the said indenture. *Burrow's Settl. Cas.* 145.

E. 19 G. 2. Baxter and Fairlam. The single question upon a demurrer was, whether an indenture of an apprenticeship, where 6d. is mentioned to be the sum given with the apprentice, be or be not void for want of the duty being paid for the said sum so given. By the court: No duty was ever intended to be paid for so insignificant

a sum, there being no coin in *England* small enough to pay it. And by the act no stamp is required for less than 20s. 1 *Wilson*. 129.

H. 28 G. 2. Yarmouth and St. Margaret's in Norwich. The pauper *William Jackson* was bound and served a seven years apprenticeship in *St. Julian's, Norwich*. But it appeared that the apprenticeship was in consideration of 6d. given to the master with the said apprentice, and no duty was proved to be paid for the same. It was objected, that this indenture was void to all intents and purposes. But on shewing cause, the point was given up, on the authority of *Baxter and Fairlam*. *Burrow's Settl. Cas.* 379.

H. 7 G. 3. St. Matthew's Bethnal Green, and St. Botolph's Aldgate. The sum of 5l. was inserted in the indenture as given with the apprentice, and was paid to the master accordingly, and the indenture had no stamp denoting the duty of 6d. in the pound being paid by the master for the said sum. This sum was paid out of a voluntary annual subscription for putting out children apprentices brought up at the charity school of the parish of *St. John Wapping*; and trustees are appointed annually for managing the said charity, and a treasurer. It was objected, that this being a private and not a permanent charity, and consequently not within the exception of the act of parliament as to public charities, the indenture therefore, not being stamped, was void. But by lord *Mansfield* and the court: It is a public charity, and a very laudable one. It is not necessary that it should be a permanent charity. The reason of the distinction between a public and private charity is obvious: a private charity might be calculated to evade the act; but a public one cannot be supposed to have been so. *Burrow's Settl. Cas.* 574.

Whether it need
to be indented.

4. *T. 5 & 6 G. 2. K. and Mellingham.* A person was bound by indenture, tho' not actually indented; and the sessions adjudged the settlement on the foot of that binding. Exception was taken, that this was a binding without indenture, and not good; and also whatever the writing was, the pauper was no party to it, nor could be concluded by it: And a deed poll will not bind an infant, nor a poor person put out by the overseers without his own contracting; for the statutes which make such covenant binding upon them, do require that the binding be by indenture. And by the court, The ex-

ception

ception must be allowed, and the order quashed. *Seff. Cas. V. 1. 330.*

And this consideration was the cause of making the statute of the 31 G. 2. c. 11. abovementioned, which enacts, That no person bound by writing not indented, being legally stamped, shall be liable to be removed for that defect only.

5. H. 3 G. 2. *Newbury and St. Mary's in Reading.* A poor boy, of 14 years of age, bound himself apprentice for 7 years to a weaver. It was argued, that this was not a binding according to the statute, and therefore did not gain a settlement; and that the indenture was void, because an infant could not bind himself. But by the court, It did gain him a settlement; for an infant may make an indenture for his own benefit. *Foley 154. Andr.*

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6. M. 10 G. 2. *St. Nicholas's and St. Peter's both in Ipswich.* There was an indenture of apprenticeship for four years; which the apprentice served accordingly: Whereas the statute of the 5 Eliz. requires that it shall not be for less than 7 years. And the question was, whether this should gain a settlement? It was urged, that it could not; for that the said statute of the 5 Eliz. enacts, that all indentures otherwise than by that statute shall be clearly void in the law to all intents and purposes; and it is appointed by the same statute, that persons dwelling in cities and towns corporate shall take apprentices for 7 years at the least, whereas this master, dwelling in a town corporate, hath taken this apprentice only for 4 years. But by lord *Hardwicke* Ch. J. and the court: The indenture is not void, but only voidable, at the election of the parties themselves, if they think fit to take advantage of it; and not by a third person. It can only be avoided by the master or servant, who were the parties to it; but not by the parish, who have had the benefit of the service of this apprentice. And the difference between this, and the case of *Cuerden and Leyland*, is, that the act about the stamps not only says that the indentures not stamped shall be void, but goes on and adds these words, *and not available in any court or place, or to any purpose whatsoever*, and that no indenture required by that act to be stamped, shall be given or admitted in evidence, unless the party first make oath, that the sum really given with the apprentice, or contracted for, was truly inserted. And yet the order made in that case, was grounded upon the indenture, which was not stamped,

ed, nor was the duty paid. Therefore the justices admitted a matter in evidence which they ought not to have done. And it hath been holden, that if the justices admit evidence which they ought not to admit, it is a sufficient reason for quashing their orders. *Burrow's Set. Caf. 91.*

Binding for further term than the law requires.

7. *T. 19 G. 2. St. Petrox and Stoke Fleming. Anne Giles*, the pauper, was bound a parish apprentice in *St. Petrox* until her age of 21, without the alternative *or till time of marriage*, as the statute requires. It was urged, that by this binding and service she gained no settlement, the binding being contrary to the statute, and therefore void. But by the court, The case of *St. Nicholas's* and *St. Peter's* is in point. The indenture is not void, but only voidable by the parties themselves, if they shall think fit to take advantage thereof; but it is neither void nor voidable by the parish as to gaining a settlement. *Burrow's Settl. Caf. 248.*

Apprentice settled, not removable.

8. An apprentice well settled, being with a master removable, cannot be removed with him; but the master may complain on the covenant. *Cases of S. 211.*

Settlement of the apprentice doth not depend on the settlement of the master.

9. *H. 4 An. St. Bride's and St. Saviour's.* A woman who was settled at *St. Saviour's*, with her apprentice by indenture, came and took a lodging in *St. Bride's*, and there continued above 40 days with her apprentice, who served her there. This was held by the court, to be a settlement of the apprentice at *St. Bride's*, though the mistress had no settlement there. *2 Salk. 533.*

Inhabitaney to be where the party lodges.

10. *M. 11 G. St. John Baptist and St. James's Bishop Cannings.* Binding and serving will not make a settlement, but the settlement must be by inhabiting; which cannot be but where the party lodges. *L. Raym. 1371. Str. 594.*

E. 3 G. K. and St. Olave's Jury. An apprentice is bound to a cobbler, who keeps a stall in one parish, lies in another, and the boy in a third; and the sessions adjudge the settlement where the stall is, because the service was there. But by the court, the boy has gained no settlement in any of the three parishes; for the stall is not sufficient to give him one, the master lying in another parish. And the order was quashed. *Str. 51.*

[Note, this case seemeth to stand alone. And by the analogy of the other cases, with respect both to apprentices and servants, it seemeth that the cobbler's apprentice gained a settlement in the parish where he lodged. A man may be occupied in several parishes in the day time, but

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but his home and habitation seems to be where he draws to at night.]

T. 3 G. St. Mary Colechurch and Radcliffe. A boy was bound apprentice to a seafaring man, and served him for a quarter of a year in the day time on land, in the parish of St. Mary Colechurch, but lay every night on shipboard in Radcliffe. But the justices apprehending the settlement to be where the service was, send him thither. It was moved to quash this order, and was likened to the afore-said case of the cobbler. By Parker Ch. J. A man properly inhabits where he lies; as in the case where the house is in two leets, he is to be summoned to that in which his bed is. And the order was quashed. Str. 60. Cases of S. 105. Foley 159.

E. 5 G. 3. Burton Bradstock and Bothenhampton. James Capon the pauper was bound apprentice for 7 years to a master at Bridport, then owner of a ship; and the apprentice went on board the said ship, and there served his apprenticeship. The said ship was employed in a coasting trade from Bridport harbour to many other ports. And during all that time, the said harbour was, and was considered by the captain and sailors, as the proper home of the ship, and to which she returned at the end of every voyage. And during the last 40 days of the apprenticeship, the said James Capon resided, lodged, and served his master on board the said ship in Bridport harbour afore-said. Bridport harbour is a basin in the parish of Burton Bradstock, which by an act of parliament in the 11 G. 2. was dug and made on a piece of land lying within the said parish of Burton Bradstock.—By lord Mansfield and the court: Lodging in a parish is the same, whether it be on board a ship or on land. Casual residences, or accidental inhabitantries, are out of the present case. This harbour or basin is stated to be the proper home of the ship, and to be within the parish of Burton Bradstock: And the service was bona fide, without any pretence of collusion, performed in that parish. Therefore there seems to be no material difference between this case, and the ordinary cases of gaining settlements in parishes by apprenticeship. Burrow's Settl. Cas. 431.

M. 7 G. 3. Casleton and Hundesfield. The pauper John Holroid was bound to a master at Casleton for 7 years. He worked, dieted, and lodged with his master in Casleton for four years and an half; and then married a woman who lived in Hundesfield. After which marriage, he worked and dieted all along with his master in

Casleton

Castleton in the day time, but lodged at nights with his wife at her father's house in *Hundersfield*, until the expiration of his apprenticeship, which was about two years and an half from the time of his marriage. By the court clearly, he gained a settlement at *Hundersfield*, where he lodged. *Burrow's Settl. Cas.* 569.

Forty days residence successively not necessary.

11. *H. 10 G. K. and Cirencester*. There was an apprentice bound in the parish, who lived there off and on for three quarters of a year. Exception was taken, that this was no settlement, since he might not inhabit 40 days together. But by the court, That is not necessary. And the order for making it a settlement was confirmed. *Str.* 579.

Apprentice assigned.

12. *E. 9 G. St. Olave and All Hallows*. If a master assigns over his apprentice, and the apprentice serves in pursuance of that assignment; he thereby gains a settlement: and it differs not whether he serves with one master or another; for he still serves by virtue of the first indenture. *Sess. C. V. 1.* 215.

13 *W. Castor and Aicles*. A poor child being bound at *Castor*, his master there assigned him over to another master, who lived in *Aicles*. And it was held, that the poor child should gain a settlement at *Aicles*, where his second master lived; for though the apprentice was not assignable, yet that assignment was not merely void, but amounted to a contract between the two masters, that the child should serve the latter. So that this assignment is good by way of covenant, though it be not an assignment to pass an interest. *1 Salk.* 68.

E. 7 G. 3. Tavistock and Kelly. *Rosamond Cock*, a poor boy, was bound a parish apprentice to *Richard Rundle* at *Lamerton*, with whom he lived there several years. Then *Rundle* transferred him by assignment to *John Prout* of the parish of *Milton Abbot*, with whom he lived till he was twenty years and an half old; at which time, he offered his service to *Thomas Mason* of the parish of *Kelly*. The said *Mason*, apprehending that he was apprentice to *Prout*, sent to *Prout* to know, whether it were with his consent that *Cock* the pauper should live with him. To which *Prout* answered, With all his heart: he might live with *Mason* or any body else, provided he performed his agreement with him; which was, to pay one guinea a year during the remainder of his apprenticeship. Accordingly he lived with *Mason* in the said parish of *Kelly*, for a year and upwards. The sessions being of opinion that he gained no settlement thereby, vacated the order of the

two justices, which removed the pauper from *Tavistock* to *Kelly*. It was moved to quash the order of sessions; and urged, that being a parish apprentice, and an infant, he could not be transferred without the consent of the justices, and himself could give no consent: and if he could, it would not follow, that he could live in *Kelly* as an apprentice, without the privity of the first master *Rundle*, and there is no consent at all from him either express or implied. Lord *Mansfield* said, The only question is, whether *Prout* consented; and it is clear he did consent: and his consent included that of the first master.

And the order of sessions was quashed, and the order of the two justices affirmed. *Burrow's Sett. Caf. 578.*

13. *M. 8 G. 2. K. and St. George's Hanover square.* *Alice Wheeler* was bound by indenture a parish apprentice, to *George Leicester*, in the parish of *St. George's*, where she lived above 40 days under the indenture, and gained a settlement: Afterwards she was by parol agreement hired out by the said master to one *Hall* in the parish of *St. Mary le Bon*, and there lived and lodged above 40 days, that is, for the space of one year and upwards, the said apprenticeship continuing; and the said *George Leicester* her master received her wages, and found her clothes: By the court, the apprentice is well settled in *St. Mary le Bon*. *Sess. C. V. 2. 138. Str. 1001. Burrow's Sett. Caf. 12.*

Apprentice serving another master, but not assigned.

E. 9 G. St. Olave's and All Hallows. A person is bound apprentice to a master who lives in *St. Olave's*: Afterwards, the apprentice by his master's consent lives with another person in *All Hallows*. By the court; He gains a settlement in the last place; for a person may serve his master in another parish or place; and although he serves another man, yet it is by consent of his master, and the benefit accrues to his master. *Cases of S. 153. Str. 554.*

M. 3 G. Parishes of Holy Trinity and Shoreditch. *Parker Ch. J.* delivered the resolution of the court. This is an order for the removal of one *Ferrer* from the parish of *Holy Trinity* to *Shoreditch*; by which it appears, that *Ferrer* was bound an apprentice to one *Truby*, with intent that he should serve *Green*; which he did for three years: And it hath been insisted, that he being bound to *Truby*, who lives in *Trinity* parish, his settlement is there; and not in *Shoreditch*, where the service was. But we are of opinion the justices have done right in sending him to *Shoreditch*, where the service actually was. It is the same thing.

thing as if *Truby* had turned him over to *Green*; in which case there would have been no question, but he had gained a settlement in *Green's* parish. *Sir. 10.*

T. 19 G. 2. Petrox and Stoke Fleming. *Anne Giles* the pauper was bound a parish apprentice to *Rebecca Gregory* of *St. Petrox*, till her age of 21. She served there 5 years; when the said *Rebecca Gregory*, by indorsement on the indenture, delivered up the said indenture, together with all her right, interest, and term of years then to come and unexpired, of the said apprentice, to *Philip Foale* of *Stoke Fleming*. And on the same day, the said *Anne Giles*, being then of the age of 14 years, did voluntarily bind herself apprentice by indenture to the said *Philip Foale*; and served him under the said indenture at *Stoke Fleming* for several years. The question was, whether a settlement hereby was gained at *Stoke Fleming*? It was objected, that here was no regular assignment of the first indenture to *Philip Foale*, it being only delivered up, but not assigned. And the term was not expired, when she bound herself to *Philip Foale*. By the court: Tho' an assignment of an apprentice, (except in *London*, by custom) cannot strictly be made; yet as this assignment was with the assent of the mistress, the service under it will be good for the purpose of gaining a settlement: for the service continued under the first binding. *Buryow's Settl. Cas. 250.*

E. 20 G. 2. Clapham and Austwick. *Michael Wilson* the pauper was bound a parish apprentice to one *Thomas Jackson* of *Austwick*, tenant to the reverend Mr. *Jackson* of *Clapham*, who had covenanted to indemnify his tenant against all parish charges. *Thomas Jackson* carried him to his landlord, together with the indenture; who accepted, received, and provided for him. He desired the mother to provide for the boy; who did so, for 3 years, in *Austwick*; and the reverend Mr. *Jackson* paid her 20s. a year. Then he lived with him in *Clapham* 8 weeks; and then ran away to his mother, and remained a quarter of a year with her in *Austwick*, and the reverend Mr. *Jackson* consented to his being there. Then the pauper was placed with his brother, a mason, in *Austwick*, as an apprentice, by the reverend Mr. *Jackson*, who gave him a new suit of clothes. And he served his brother, as an apprentice, a twelvemonth or two, in *Austwick*; who took him as an apprentice, and quitted the reverend Mr. *Jackson* of him. But the representatives of the first master (who was then dead) knew nothing

thing of this, nor ever assented to it; nor any thing of his living with his mother. It was objected, that this service of the third master in *Austwick* could not be considered as a service under an assignment, nor as a service under the indenture, for want of the consent of the first master. On the contrary, it was insisted, that this service must be considered as under the indenture; the first parol assignment being, to this purpose, good. *Wilson* was the legal apprentice of *Thomas Jackson*, and the equitable apprentice of the reverend Mr. *Jackson*. A legal assignment is not necessary. And this is a sufficient service under the first indenture. To this it was replied, that he gained his last legal settlement at *Clapham*, by the eight weeks service. The agreement with the mason is not an assignment, but an attempt of a new binding, whilst the first indenture was subsisting; which therefore is not good. By *Lee Ch. J.* and the court: The statute only requires a binding by indenture, and gives a settlement where the last 40 days are served. Here is a binding by indenture; and the first master delivers over the apprentice and indenture to his landlord, who receives him. This therefore must be looked upon as receiving him under the terms of the indenture. If there had been no inhabitancy elsewhere, after the boy's living eight weeks with the reverend Mr. *Jackson*, at *Clapham*, the settlement had been there. But a settlement is fixed at *Austwick*, by the boy's living there a quarter of a year, with the consent of his master, and after that, by his service to the mason. There is no ground for the distinction, that a second master cannot assign to a third, that is, so far as to gain a settlement by the service under it. This was not a new binding to the mason, for a new contract could not be made whilst the former subsisted; but the service with the mason was a service under the first binding. *Burrow's Settl. Cas.* 226.

T. 21 & 22 G. 2. St. Mary Kalendar's and St. Michael's. *John Miles* the pauper was bound by indenture an apprentice for 7 years, to *John Gregory* of *St. Michael's*; and under that indenture, lived with the said *John Gregory*, and served in *St. Michael's* for five years; and at the end of the five years left his said master; and the indentures were exchanged between the master and the apprentice's father, by consent of the apprentice. And about one year afterwards, the father of the said *John Miles* contracted with *William Stockdale* of *Twyford* for binding the said *John Miles* apprentice to the said *William Stockdale* for four years; and

and in consequence of that agreement, the said *John Miles* went to the said *William Stockdale* on trial, and lived with him in *Twysford* for one year and three quarters : But no indenture was executed, nor any other agreement made. And while the said *John Miles* lived with the said *William Stockdale*, *John Gregory* his former master lived within four miles of *Twysford*, and knew of his being in the service of the said *William Stockdale*. But no other proof was made, that the said *John Gregory* consented or agreed to the said contract made between the said *John Miles's* father and the said *William Stockdale*. The question was, Whether under the circumstances of this case, any settlement was gained at *Twysford*? By *Lee Ch. J.* and the court: There can be no ground to consider this as a settlement at *Twysford*, but upon supposing the first indentures to have subsisted, and that the service at *Twysford* was under them. But that could not be; because the exchange of the indentures certainly amounted, either in law or in equity (and they are the same thing in this case) to a cancelling of them, and a determination of the apprenticeship under them. Besides, there is no consent of the original master, but the contrary is apparent; his knowledge of the fact doth not at all imply his consent to the transaction. The apprentice's living at *Twysford* was not under, but contrary to the first indenture. It was in consequence of a fresh agreement, and for a new term. *Burrow's Settl. Cases.* 274.

E. 30 G. 2. Fremington and Sherwell. *Mary Bevans* was bound a parish apprentice to one *Richards* in *Fremington*; who, after some time, declared that he had no business for her; and gave her permission to go and work elsewhere, for her own benefit; and on his recommendation she was hired to one *Mr. Nott* at *Sherwell*, from the first of *June* till *Lady-Day*, and served him there, for the wages of 32 s. And then went back to her master, with whom she staid 8 days; and then the term of her apprenticeship expired. This was held to be a good settlement at *Sherwell*; for she was not discharged from her apprenticeship, nor intended to be so. Her master only gave her leave to go elsewhere and serve another person, for her own benefit. She returned to her master, and was received by him and staid with him to the end of her term. And consequently, the service with *Mr. Nott* in *Sherwell* was a continuation of the apprenticeship, and performed under it. *Burrow, Mansfield.* 306. *Burrow's Settl. Cases.* 416.

14. E. 10 G. *Buckington and Shepton Bechamp*. The Apprentice hired himself for a year, and served the year. By the court; He gained no settlement, not being *sui juris*, nor of a capacity to hire himself; otherwise, had it been by consent of his master, or had his indenture been cancelled. *Cases of S. 155. L. Raym. 1352. Str. 582.*

Note; In the *Cases of Settlements*, this case is reported under the name of *K. and Shipton Curry*; by *L. Raymond*, under the name of *Buckington and St. Michael Sebington*; by *Sir John Strange*, under the name of *Packington and Chepton Beencham*. None of all which seem to exhibit the true names of the contending parishes, for there are no such parishes as most of those here rehearsed; and therefore it is presumed to insert the real names of the parishes, which these appellations seem most probably to denote, namely, *Buckington and Shepton Bechamp*. And here it may be proper to observe once for all, the great inaccuracy in the names of places and persons, which every where occurs in the books of reports, arising (as it seemeth) from two causes. 1. From the reporter's taking down the name in court by the sound only, which oftentimes may cause a wide difference in the orthography. And, 2. From the hand-writing of the reporter perhaps not being very legible; the case being taken down in a hurry of the pen, and not published but by others after the reporter's death. Where the matter is very notorious, liberty hath been taken throughout this book, to restore such broken words to their genuine and known originals; so as to read instead of *Hedcome*, *Hedcorn*; for *Misserden*, *Missenden*; for *Trensham*, *Frensham*; for *Wooden*, *Woodend*; for *Yexford*, *Yokesford*; for *Eutoscatur*, *Uttoxeter*; and many other such like.

Mr. Burrow, who from his situation, as being master of the crown office, hath opportunity to receive the true names from the records themselves, is extremely useful in this, as in other more important respects; and that, not only in the cases he reports himself, but in others occasionally referred to. In speaking of the proper method of intitling cases of settlement, he observes,—“It may not be amiss to set forth a general rule, for intitling all cases arising upon orders of removal; the want of knowing, or the want of attending to which general rule, hath been the occasion of infinite confusion, in tabling and citing cases of this sort. The constant method of entering them in the rule book, is, to name the King as prosecutor: and the parish last charged with

“ the pauper, and consequently appealing to the court
 “ of king’s bench, as defendants. For instance: Two
 “ justices remove a pauper from *A.* to *B.*; and *B.* ap-
 “ peals to the sessions. If the sessions confirm the order,
 “ and *B.* brings the *certiorari*, the rule thereupon is in-
 “ titled *Rex versus Inhabitantes de B.* But if the sessions
 “ discharge the original order, and consequently *A.* re-
 “ mains charged with the pauper, and brings a *certiorari*
 “ to remove the orders, then the rule bears for its title,
 “ *Rex versus Inhabitantes de A.*” (*Burrow, Mansfield. 52.*)
 —Nevertheless, as authors, in reciting these cases, and
 the learned counsel and the court in their arguments, some-
 times give the name of one of the parishes, and sometimes
 of the other, and sometimes of both; and the case in some
 instances may be easier apprehended, or explained with-
 less circumlocution, by inserting at the head of it the
 names of both the contending parishes; that method is en-
 deavoured to be pursued throughout this course of settle-
 ments, where both the names can with reasonable cer-
 tainty be come at. Sometimes a case is reported, without
 the name of either of the parishes, but with the name on-
 ly of the pauper; as *John Giles’s case*, *Bridget Bayly’s case*,
 and the like: In these, together with the names of the
 parishes, it seemeth essential, to retain also the name of
 the pauper.

Apprentice dis-
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 ring for a year.

15. The son was bound apprentice to his father, who
 afterwards gave up the indentures of apprenticeship, but
 did not cancel them: Then the son was hired into an-
 other parish for a year, and served the year; and being
 likely to be chargeable, he was sent by an order to the
 parish where he lived as an apprentice; because, the in-
 dentures being not cancelled, he still continued an ap-
 prentice there. *Mod. Cas. 190. Dalt. 180.*

*T. 5 G. 5. St. Luke’s in Middlesex, and St. Leonard’s
 Shoreditch.* The pauper *William Hutchins*, was bound a
 parish apprentice to one *Frost*, a shoemaker in *Southwark*,
 till his age of 24, and served him there three years. The
 master then removed to the parish of *St. Luke in Middle-
 sex*, taking the apprentice with him, where he served
 four years. The master then told him to go about his
 business, and work for himself: But the indentures were
 not cancelled nor delivered up. The pauper hired him-
 self as a journeyman to several masters of the same trade
 in different parishes; and believed the said *Frost* did not
 know what masters he worked with after he left him, nor
 ever called upon him to account for what money he earn-
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ed, and the pauper applied the same to his own use. He worked and lodged the last 40 days before he attained the age of 24 years, in the parish of *St. Leonard's Shoreditch*. The question was, Whether he gained a settlement at *St. Leonard's* by this service? By lord *Mansfield* and the court: The indenture of apprenticeship remained in force; and the relation of master and apprentice continued. But this service in *St. Leonard's* cannot be considered either as a service of his first master, or as an assignment. He was incapable of making a contract by way of hiring and service, or of any act to gain a settlement. If his master had assigned him over to a particular person, it would have gained him a settlement, as a service to the first master. But this working in *St. Leonard's* was not carrying on the business of the first master there, nor any service under the indenture. But the settlement is in that parish where he had last served his first master as an apprentice for 40 days, which was in *St. Luke's*. *Burrow's Set. Caf. 542.*

But it is not necessary, in order to a discharge, that the indentures be cancelled; it is sufficient if they be delivered up. *Titchfield and Milford. M. 4 G. 3. Burrow's Set. Caf. 511.*

16. *H. 31 G. 2. Austrey and Grindon. Francis Orton*, being then about ten years of age, was in *April 1744*, bound a parish apprentice to *Samuel Lythall* of the parish of *Grindon*, till his age of 24. He served with his master there under the indenture till *Michaelmas 1754*; at which time, the master, in consideration of 40s. then paid to him by the apprentice, agreed to discharge him; which receipt and discharge were indorsed and written by the master on the indenture, which he then delivered up to the apprentice. The said apprentice then went and hired for a year, and served that year, at the parish of *Higham*. Afterwards, to wit, at *Michaelmas 1755*, he hired for a year, and served that year in the parish of *Austrey*. He was then upwards of 23 years, but not 24 years of age.—The two justices remove him to *Grindon*, judging him to have gained no settlement under these services. The sessions quash the order. It was moved to quash the order of sessions. Against this, it was urged, That the apprentice by his discharge became *sui juris*. No interest at all remains in the parish officers. Their power is only a limited power. And a parish child thus bound, agreeable to the statute of the 43 *El.* is upon the same foot as if he had bound himself; and when of

At what age an apprentice may consent to a discharge.

full age, is at liberty to consent to his own discharge, and thereby to put an end to the apprenticeship. But if not, yet the service being by his master's leave and consent, it gains him a settlement in the place where it was performed; which was first in *Higham*, and afterwards in *Austrey*. By lord *Mansfield* Ch. J. The whole depends upon the question, Whether he was of age, or under age, at the time of his consenting to the discharge. And by comparing the dates as above, it appears that he was under age; and then his consent signifies nothing. For the consent of an infant apprentice is, as if he had given no consent at all. And if so, his subsequent services can never be considered as performed by the master's leave and consent, and so, as being a service of his master under the indenture; because this is no express and explicit leave and consent given by the master to the particular service (as in the case of *Fremington* abovementioned); but was intended to be altogether general, and is even founded in a mistaken apprehension, that the apprentice could consent to his being discharged; which he, being an infant, was not capable of doing. And the order of sessions was quashed, and the original order affirmed. *Burrow, Mansfield. 499. Burrow's Settl. Cas. 441.*

E. 6 G. 3. Ecclesal-Bierlow and Warflow. The pauper *Samuel Wilshaw*, being a parish apprentice, after he had attained the age of 21 years, agreed with his master to cancel the indentures, and the same were accordingly cancelled. Afterwards, he was hired for a year and served that year in *Warflow*, which was within the term comprehended in the indenture. It was objected, that he was not *sui juris* when he entered into the contract to serve at *Warflow*; for the binding being by the parish under the 43 *El. c. 2.* he could not, tho' above the age of 21. cancel the indentures without the approbation of the overseers of the poor. By lord *Mansfield* Ch. J. There seems to be no necessity of the parish officers joining in the consent to discharge this apprentice. There is no authority for it. And I see no inconvenience to the parish, or to any one else, in its being done without their concurrence. The act impowers them to bind the man-child out apprentice, till he comes to the age of 24. And the act was necessary to make valid the binding of the male parish apprentice till his age of 24; for he could not be bound longer than till 21, without the aid of the act. And two justices are to assent to this. But the same reason doth not hold, as to the discharge of the apprentice. This concerns the master and the apprentice

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tice only. The latter part of the apprentice's time is of most service to the master. Therefore the apprentice being of age, if the master and he agree to it, they two may dissolve the contract. If so, then this person was *sui juris* when he hired himself at *Warslow*; and consequently, he gained a settlement there by a hiring and service for a year. *Burrow's Settl. Cas.* 562.

17. *H. 32 G. 2. St. Cuthbert's and Westbury.* A person, settled at *St. Cuthbert's*, was bound apprentice to a man residing at *Westbury*, but whose settlement was at *Harptree*, a neighbouring parish. After the apprentice had served 22 days, his master obtained a certificate from *Harptree*, and delivered it to the overseers at *Westbury*; and the apprentice served there further with his master for three years. The question was, Whether the apprentice hereby gained a settlement at *Westbury*. By the court: Before the act, serving under an apprenticeship to a certificate man for 40 days, in the parish where the master lived, would have gained a settlement to the apprentice. But the act says, that if any person shall be bound apprentice by indenture to any person residing under a certificate, he shall not thereby gain a settlement. Now here is no service for 40 days under an apprenticeship to a master who did not reside in this parish under a certificate; and therefore the apprentice in this parish did not gain a settlement. But it would have been otherwise, if he had served 40 days, before his master became certificated. *Burrow, Mansfield.* 749. *Burrow's Settl. Cas.* 470.

Apprentice bound before the execution of a certificate.

18. *T. 13 G. 2. East Bridgeford and Orston.* The master of a parish apprentice dying intestate, his widow, without any administration taken out, assigned the apprentice to *Edward George*; who with the consent of the apprentice, assigned him over, by verbal agreement, to *Thomas Baggaley* of *East Bridgeford*, for the remainder of his term of 9 years. And he accordingly lived with the said *Thomas Baggaley* at *East Bridgeford*, and served out his time there, which was more than 40 days. This was unanimously holden to be a good settlement in *East Bridgeford*. For tho' an assignment of an apprentice be not strictly legal, yet where an apprentice has lived and served 40 days under an assignment, he shall gain a settlement, because of the consent, even tho' it be only a verbal agreement. *Burrow's Settl. Cas.* 133.

Master dying.

Note; this is stated to have been by the apprentice's own consent; and consequently by the assignment it became,

as it were, a new apprenticeship: and the point seemeth not to have been in question, Whether by the death of the master the apprenticeship was determined. But in the case of *Eakring and Selson*, *E. 26 G. 2.* The master died. The apprentice, a year and more before the expiration of the term for which he was bound, hired himself for a year and served that year; and it was held that thereby he gained a settlement. For apprenticeship is a personal trust between the master and servant, and is determined by the death of either the master or apprentice. *Burrow's Settl. Caf. 320.*

Apprenticeship not good by indenture, shall not enure as a service.

19. *M. 5 G. 2. Salford and Storeford.* It was moved to quash an order of two justices confirmed at the sessions. The sessions state the case specially, that one *Lineacre* had been bound an apprentice by indenture, and served his master the last two years of his apprenticeship in the parish of *Salford*; but that his indenture was not stamped. However, the justices adjudged this to be a good settlement by way of service, though not as an apprenticeship; and accordingly removed his wife and two daughters from the parish of *Storeford* to the parish of *Salford*. But the court held this to be no settlement, on the authority of *Cureden and Leiland*; and quashed the order. *2 Barnardist. 39.*

T. 5 G. 3. Whitchurch Canonorum and Wotton Fitzepayne. The pauper *John Gay*, being of the age of 22 years, agreed with a stone mason that he should take the said *John Gay* apprentice for 6 years, to teach him the trade, and that indentures should be executed accordingly. He went and served 5 years, when they parted by consent; but no indentures were ever executed. It was contended, that this was good as a hiring and service. But by the court, Here is no hiring expressed or implied. The objects are different. A binding as an apprentice, and a hiring as a servant, cannot be converted one into the other. And the case of the *King and St. Mary Kalendar in Winchester* was mentioned as in point. *Burrow's Settl. Caf. 540.*

Indenture not produced, how far parol evidence shall be admitted.

20. *T. 13 & 14 G. 2. East Knoyle and Teffont Magna.* Two justices make an order to remove *Anne Bowles*, wife of *James Bowles* (who had run away and left her) from *Teffont Magna* to *East Knoyle*. Upon appeal, the sessions confirm that order, and state the case thus: It appearing to this court, upon the evidence now given, that the said *James Bowles* was bound an apprentice by indenture, to one *William Wilkins* of the parish of *East Knoyle*, and that

he

he served 3 years at *East Knoyle* aforesaid under the said apprenticeship; at which time the said *William Wilkins* the master died; and that the sum of 5 l. being the full consideration money, was paid by his father with the said apprentice for such his binding: But the indentures of apprenticeship were not produced; neither did it appear to this court whether the duty of 6 d. in the pound directed to be paid by the statute of the 8 *An. c. 9.* was paid, or whether the said indentures were stamped as the said statute requires.—It was objected, that the justices had admitted evidence that was not legal; That they admitted parol evidence of an indenture, which they state not to have been produced, and have not given any reason why it was not produced, nor did it appear to them that the duty was paid, or whether the indentures were stamped as aforesaid. But Mr. justice *Page* and Mr. justice *Chapple* (the only two judges that were in court) over-ruled the objection, and refused to make a rule to shew cause. For it is stated, that it appeared to them that he was bound by indenture. Perhaps the indenture was lost. Nor do they say that the duty was not paid, or that the indenture was not stamped. *Burrow's Settl. Cas. 151.*

T. 22 & 23 G. 2. St. Helen's Abingdon and St. Saviour's Southwark. Two justices make an order to remove *Anne Hutt*, wife of *Joseph Hutt* (who had absconded for 6 months) from *St. Saviour's* to *St. Helen's*. And the sessions upon appeal confirm that order, and state parol evidence produced before them of an indenture of apprenticeship (not produced) of *Joseph Hutt* the father to *William Hutt* the grandfather. Upon the whole of which, it appeared that the indenture was not produced, and probably (even to very strong presumption) was never stamped. It was moved to quash these orders, for that there is only parol evidence of an indenture, which ought itself to have been produced; and it doth not appear to have been stamped. And by the court: There is not enough stated to shew, that this is a binding within the act. And the orders were quashed. *Burrow's Settl. Cas. 292.*

Indeed parol evidence of an indenture ought to be admitted with great caution, and not without sufficient proof that the original could not be come at. And in case of parol evidence, it seemeth that all those circumstances, without which the indenture would not be good if produced, ought to be proved satisfactorily to the court:

court: as, that the indenture was written upon stamped paper or parchment; that it was executed by the parties; what sum (if any) was given with the apprentice; and that an additional stamp upon the account of such sum of money or other valuable thing was also impressed. Otherwise, where the indenture upon the face of it would be bad, it may possibly be secreted by those whose interest it is that it should not appear.

vi. Of settlement by service.

In like manner as under the last head, I will first set down the whole law relating to the subject before us, and then the adjudged cases upon the several branches thereof.

Statutes concerning settlement by service.

By the 13 & 14 C. 2. c. 12. On complaint by the church-wardens or overseers, within 40 days after any person shall come to settle in any teneament under 10 l. a year, two justices, (1 Q.) may remove him to the place where he was last legally settled, either as a native, householder, sojourner, apprentice, or servant, for the space of 40 days at the least.

But by the 17 J. 2. c. 17. The forty days continuance shall not make a settlement, but from the time of delivering notice in writing.

And by the 3 W. c. 11. From the publication of such notice in the church.

But by another clause in the said act of the 3 W. If any unmarried person, not having child or children, shall be lawfully hired into any parish or town for one year, such service shall be adjudged and deemed a good settlement therein, though no such notice in writing be delivered and published.

And by the 8 & 9 W. c. 30. Whereas some doubts have arisen touching the settlement of unmarried persons, not having child or children, lawfully hired into any parish or town for one year, it is enacted and declared, that no such person so hired as aforesaid, shall be adjudged or deemed to have a good settlement in any such parish or township, unless such person shall continue and abide in the same service during the space of one whole year.

By the 12 An. st. 1. c. 18. If any person after June 24. 1713. shall be hired servant with any person, who did come into, or shall reside in any parish, township, or place, by means or licence of a certificate, and not afterwards having gained a legal settlement in such parish, township, or place; such servant shall not gain any settlement in such parish, township, or place, by
reason

reason of such hiring or service, but shall have his settlement as if he had not been an hired servant to such person. s. 2.

And by the 9 & 10 W. c. 11. No person who shall come into any parish by a certificate shall be adjudged, by any act whatsoever, to have procured a legal settlement in such parish, unless he shall bona fide take a lease of a tenement of 10 l. a year, or shall execute an annual office in such parish: (And consequently shall gain no settlement by service.)

On complaint within 40 days] By the statute of C. 2. persons became settled, if not removed in 40 days. But whereas people came privately into parishes, and continued perhaps 40 days, before they were publicly known to be there; therefore the statute of the 1 J. 2. did provide, that such 40 days should not gain a settlement, but after the time of delivering notice in writing to the overseers, that such person was come to inhabit in such parish. And whereas in that case, the overseer to whom such notice should be delivered, either through ignorance or wilfulness, might conceal such notice from the inhabitants; therefore the 3 W. did provide, that such 40 days should be accounted from the time of the publication of such notice in the church, and not otherwise. But then by the subsequent clause of the statute of the 3 W. it is enacted, that if any unmarried person, not having child or children, shall be lawfully hired into any parish or town for one year, such service shall be adjudged a good settlement therein, though no such notice in writing be delivered and published: And the reason thereof is this, because that such notice would not avail; for that the justices upon complaint of the overseers, who are no parties to the contract, cannot make void the contract between the master and servant, by which the servant is bound to continue with his master, if he requires it. And therefore upon this act, if the servant was hired for a year, and served 40 days under that hiring, he was not removable, and gained a settlement; and so in every place where he served 40 days under such hiring, he there gained a settlement; and where he served the last 40 days, there was his last settlement. But this easy method of acquiring settlements, causing servants to become insolent, at last the statute of 8 & 9 W. was made, which enacteth, that no such person so lawfully hired into any parish or township shall be adjudged to have a good settlement there, unless he shall continue in the same service during the space of one whole year. But if he shall continue in such service during the space of one whole year, his settlement in

General exposition of hiring and service.

in all othkr respects shall be as before; that is to say, every continuance of 40 days unremoveable during such service for the year shall be deemed a settlement; and where he continues the last 40 days, there is his last settlement. But there hath been much doubting, what shall be deemed a hiring for a year, and also what shall be deemed a service for a year, within the sense of these statutes; and what relation such hiring and service shall bear to each other: The arguments for and against which on each side, in the adjudged cases hereafter following, will be the better understood, from this short historical account which hath been given, of the progress of the law relating to this matter.

Forty days residence necessary to a settlement.

40 days] Less than 40 days residence in any parish will not gain a settlement. As in the case of *Goring and Moleworth*, E. 4 G. 2. A person was hired for a year, and served the year. His master lived at *Goring*, and kept a boat, which navigated from *Goring* to *London*, but the servant was not 40 days in the whole year at the parish of *Goring*, but served out the year on board the boat. By the court, This was no settlement at *Goring*. Sess. C. V. I. 327. Cas. of Settl. 219. 1 Barnardist. 436.

But it is not necessary that the servant reside 40 days together without interruption. As in the case of *Greenwich and Longdon*, M. 18 G. 2. *George Wall* was hired for a year and served a year, as a livery servant, at 7 l. wages, to one captain *Saunderson*, commander of the *William and Mary* yacht, who had an house and family at *Greenwich*, and resided there when not absent on the king's service. His master made frequent voyages to and from *Holland*, and he always attended him in the same; and he was never 40 days together at *Greenwich*, but during his service, he was there 40 days at different times. By the court: It need not be 40 days all together; it is sufficient if within the year he reside 40 days in the whole. *Burrow's Settlement Cas.* 243.

Whether the servant may be removed from the master.

Two justices, (1 Q.) may remove him] But it hath been observed before, that the justices upon the complaint of the parish officers, cannot remove the servant from his master; because they cannot upon such complaint dissolve the contract betwixt the master and his servant, to which contract the officers are no parties; for that can only be done upon the complaint of the master or servant. Therefore if a maid servant shall happen to be with child, which child is likely to be born a bastard; yet if her master is willing

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willing to keep her, the parish cannot remove her; but the master, if he pleases, may complain to a justice of the peace, that she is less able to perform the service, and the justice (if he sees cause) may discharge her, and then the parish by order of two justices may remove her.

But although regularly the servant cannot be removed from the master, yet the master may be removed from the servant; as if the servant hath gained a settlement in the parish, and the master hath gained none, which may often happen, the settlement of the servant no way depending upon the settlement of the master; in such case, if the parish will remove the master, they cannot remove the servant; but the master may complain to the justices, who may compel the servant to go along with him.

If any unmarried person not having child or children] E. Unmarried person, hiring.
 10 *An. Antony and Cardigan.* A person having a daughter, which daughter was married and settled elsewhere, hired himself for a year, and served the year: By the court, He is a single person within the meaning of the act, tho' not expressly within the letter of it. The meaning of the statute was, that he might not bring any consequential damage to the parish, which he cannot possibly do here. And they held that the man, notwithstanding he had a child, gained a settlement by virtue of that service. *Cases of S. 7. Foley 131.*

E. 1 An. Faringdon and Witty. A servant hired for a year, served half a year of the time, and married. The question was, Whether the justices, on complaint of the overseers, could make an order to remove him to the place of his last legal settlement? By the court, The contract between the master and servant was not dissolved by the marriage; and admitting it might be dissolved by an order made on complaint of the master, yet without that, and upon complaint of the officers only, it could not be dissolved. And the marriage doth not hinder the service; the contract continues; and if the man performs his service, he gains a settlement. *2 Salk. 527.*

The same resolved, *M. 1 G. 2. K. and Sutton. Seff. G. V. 2. 121.*

T. 27 G. 2. Hanbury and Tarbick. The pauper was hired for a year at *Hanbury*; served three quarters of the year; then married; whereupon his master took him before a justice, who allowed the master to discharge him for marrying within the year, but made no order in writing. The question upon this was, Whether the servant was

was properly discharged within the statute of the 5 *El. c. 4. s. 5.* By *Lee Ch. J.* and the court: Here is no act of jurisdiction in the justice, having made no order in writing. Though the master might dispense with the service by parol, a justice of the peace cannot, who hath his jurisdiction by statute, and every thing he does in pursuance of it must be by order, and that is examinable in the court of king's bench. Therefore the court held, this was no discharge of the service. And they said that the justice can only, by the said statute, discharge for *reasonable cause*; and that marriage itself, as such, is not a reasonable cause; the same being no offence, nor inconvenience to the publick.

E. 31 G. 2. Bank Newton and Marton. *George Ayrton*, the pauper, and his wife, being legally settled at *Bank Newton*; he the said *George Ayrton*, on the 16th of *February 1738*, agreed with *John Wilcock*, son of *Henry Wilcock* of *Marton*, by order and on behalf of his said father, to serve the said *Henry Wilcock*, for a year from the 24th of the same month of *February* (when his father's then servant was to go away), at 5 guineas wages, in case the said *Henry Wilcock* should approve the said terms. On the 18th of the said *February*, the wife of the said *George Ayrton* died, without issue. On the 24th of the same month, the said *George Ayrton* went to *Henry Wilcock*, and *Henry* asked him, upon what terms his son and he the said *George* had agreed. Which terms he the said *George* repeated, as above. Whereupon, he the said *Henry Wilcock* said, that he did agree to the said terms. And the said *George Ayrton* did then enter upon, and continue in the said service for a year. It was objected, that this man was not an unmarried person at the time of the hiring, to wit, on the 16th of *February*.—Unto which it was answered, that the contract was not compleat, but a mere nullity, till the assent of the principal (the father), which was, on the 24th. For he had it in his power to disapprove. It was not binding, till his assent was given. For the agent only acted under a limited authority. And when the principal did assent, the servant was unmarried.—And by the court, It is clear, that the hiring was on the 24th. For the father might have dissented from the conditional agreement made by his son on the 16th. And, consequently, they held, that this hiring and service did gain a settlement at *Marton*, where the service was performed.

Burrow, Mansfield. 455. Burrow's Settl. Cas. 455.

Shall

Shall he lawfully hired into any parish or town for one year.] Hiring for a year. These words do introduce one great subject of debate, namely, What shall be deemed a sufficient *hiring for a year* within these statutes, by virtue whereof a person shall be intitled to gain a settlement? Concerning which it hath been resolved as follows:

(1) *M. 9 An. Dunsford and Ridgwick.* A person was hired for half a year, and after that was hired again for another half year, with the same person, and thereupon served a year in one continued intire service, but by several hirings. By the court: It ought to be one intire contract and one intire service; the one is required by the statute, as well as the other. If a service under several contracts shall gain a settlement, one that serves by the month, by the week, or by the day, may, if he continues a year, gain a settlement. One may hire by the day for charity; but there is danger of being chargeable in hiring such a person by the year. For such a term as a year, it is not supposed a master would hire one, unless able of body, and so a person not likely to become chargeable. 2 Salk. 535.

M. 12 An. Horsbam and Shipley. A person was hired from *May-day* to *Lady-day*, then from *Lady-day* to *May-day*; and so on again in like manner for another year. The question was, Whether this gained a settlement? And the court were of opinion, it did not; for they said the hiring must be for a year. *Foley* 134.

(2) *H. 24 G. 2. Wincaunton and Crediton.* A boy of 17, born in *Wincaunton*, offered himself to serve *Samuel Williams* of *Charlton Horethorne*; who hired him to serve him in husbandry, and agreed to give him meat, drink, washing, lodging, and cloaths when wanted; but no particular time was agreed on, and the pauper apprehended his master might have been off, or he might have gone away from him, at their pleasure: nevertheless there was no agreement for that purpose. The boy continued and served him in *Charlton Horethorne* two years and an half. By the court: He gained a settlement there, by this service. A general hiring for a year. And here are no circumstances in this case, to shew an intention to the contrary, or to vary it from the general rule. The mere apprehension of the pauper doth not do it. *Burrow's Settl. Cas.* 299.

E. 33 G. 2. Handley and Berwick St. John's. The pauper, settled at *Handley*, happening to meet Mr. Jones, head

To be by one intire contract.

General hiring, implies hiring for a year.

head keeper of *Rushmore lodge* in the parish of *Berwick, St. John*, who had then lately parted with one *Edward Hill*, who had been for many years one of his servants or under-keepers, at the wages of 3*l.* a year and a keeper's livery, besides meat, drink, and lodging; the said Mr. *Jones* addressed the pauper thus, Do you like the life of a keeper? Which being answered in the affirmative, he said further, Then go into *Ned Hill's* place, and you shall want no encouragement. Accordingly he went, and continued in the service for 3 years, and received 3 years wages. The question was, Whether this conversation amounted to a hiring for a year, so as to gain a settlement. It was urged, that a hiring generally is hiring for a year, and that the law knows no other servant but one for a year; and that this has an express reference to *Hill's* service, which was for a year. On the contrary, it was argued, that here was no actual hiring at all; and none can arise by implication, from the bare service alone: and that the reference to *Ned Hill's* service relates to *Hill's* work only, and not to his contract. By lord *Mansfield*, and the court: This man served 3 years, and received wages accordingly. But it is objected, that he was never hired at all. It is admitted, that if he was hired at all, it would by law be a hiring for a year. And upon the state of this conversation, it is a clear hiring; for *Hill* was a hired servant. And therefore it was adjudged, that the pauper thereby gained a settlement. *Burrow, Mansfield. 988. Burrow's Settl. Cas. 502.*

Hiring for a year,
part of which
was then past.

(3) *M. 25 G. 2. Ilam and Tutbury.* *Rowe Port*, of the parish of *Ilam*, esquire, hearing that the pauper was a likely boy to serve him as his postilion, sent to the pauper's father to have him upon liking. After the pauper had served Mr. *Port* 8 weeks on liking, Mr. *Port* hired him for a year to commence from the beginning of the said 8 weeks. He served Mr. *Port* in the said parish of *Ilam* a year (including the 8 weeks) and ten days and no longer. By *Lee Ch. J.* This case differs from all the former cases. In *Lidney* and *Stroude*, the first hiring was conditional, for a quarter of a year upon liking; and if they did like each other, then to continue for a year: Yet it was holden a good settlement, as they did like each other; and the year's service was performed. In *New Windsor* and *Chepping Wycomb*, it was uncertain till the end of the year, whether the hiring would be for a year, yet happening so in event, it was held good. In the present case, the commencement of the hiring was 8 weeks

weeks after the boy had been upon liking, with a retrospect to his first coming into the service. Now a man cannot serve from a day past. Mr. justice *Foster* thought the cases of *Lidney* and *Stroude*, and *Chepping Wycomb* and *New Windsor*, had carried the matter as far as possible; and if they were new questions, he should doubt of those resolutions: But both these were hirings for a year, previous to the service; and the conditions were performed. He observed also, that the safest way is to adhere strictly to the words of the act of parliament; for refinements upon these questions have produced infinity of questions and difficulties. *Burrow's Settl. Cas.* 304.

(4) *T. 3 G. Ranton* and *Haughton*. Order specially Hiring for eleven months. stated: *John Evans* was hired with *Ralph Trubshaw* of *Haughton* from *Asb-Wednesday* till *Christmas*, and served him that time. Then he went away from him, and staid with his father in *Ranton*, for about a week. Then he returned to the said *Ralph Trubshaw*, and was again hired with him for 11 months, and served him the said 11 months: Then departed from the said *Ralph Trubshaw*, and took his cloaths with him, and was absent one week. Then he returned to the said *Ralph Trubshaw*, and was hired with him for eleven months, and accordingly served him; and then left that service, and went to his father in *Ranton*, and staid about one week. Then the said *John Evans* served one *John Sutton* of *Haughton* aforesaid for about three weeks; then returned to *Ranton* aforesaid, and staid for about a week: and then returned to the said *John Sutton*, and hired with him for 11 months, and served within a fortnight or 3 weeks of the last 11 months, where, by agreement with the said *John Sutton*, to avoid a settlement in the parish of *Haughton* aforesaid, he left him, took his cloaths, and went into the parish of *Gnosall*, and there continued about a week; then returned to the said *John Sutton*, and continued with him so long as to make up his service of the last 11 months; and 3 weeks before *Christmas*, the said *John Evans* hired himself again to the said *John Sutton*, for another 11 months, and served him from that time till within 3 weeks of *Michaelmas* following, and then came away and married. The question was, Whether these several hirings were sufficient to gain a settlement in the parish of *Haughton*? *Parker Ch. J.* said, this was an apparent fraud, and different from all the other cases. *Pratt J.* said, I doubt we must take the law to be, that there must be a hiring for a year, and a service for a year: Here the sessions have found it specially, and

and there is neither hiring nor service for a year: And suppose a man that lives in a parish incumbered with poor, hires a servant for 11 months only, purposely, by way of caution, to prevent a charge upon the parish, the intent is lawful, and how can such hiring and service gain a settlement? And as to the matter of fraud, if there is any, the justices of the peace are judges of that. *Eyre J.* was of the same opinion of *Pratt J.* *Powis J.* being absent. Afterwards, in *Easter* term, after long debate and consideration, the opinion of all the court was, that these hirings and service in the parish of *Haughton* were not sufficient to gain a settlement: and though such hirings as in this case do defeat settlements, yet if that is a mischief, it is to be remedied by the legislature, and not by the court, which is to judge on the law as it stands. *Fol.* 137. *Str.* 83. 10 *Mod.* 392.

T. 30 & 31 G. 2. Milwich and Creyton. Two justices remove *Thomas Thacker* and his wife and children from *Creyton* to *Milwich*. The sessions confirm the order and state specially, That *Thomas Thacker* was hired at *Milwich* for 11 months for 4*l.* 10*s.*; and it was agreed between him and the master, that he should give in a month's service, beyond the 11 months. He served the 11 months, and also the given-in month, except the last 3 days, and he could not say whether he served them or not; but he received the whole 4*l.* 10*s.* wages. It was moved to quash these orders; because this was not a hiring for a year, being only for eleven months; nor a service for a year, because three days are wanting at the end of it. But the court were very clear, that this agreement is a manifest contract to serve for a year, notwithstanding the form of expression; (which by the way they considered as an attempt to prevent the man's gaining a settlement, by a very paltry evasion.) The real question is no more than whether 11 and one make 12. There are no particular technical words necessary, to make a hiring for a year. The substance of this agreement is, to serve 12 months, for 4*l.* 10*s.* And what signifies the variation of expression? Every contract to serve, is a contract to serve for a year, unless there be something to explain it otherwise; and certainly there is nothing here to explain it otherwise. And no action could have laid for the wages, till the end of the whole 12 months. And as to the servant's going away three days before the end of the year; the state of the fact doth not support the objection. He only could not say, whether he did or not. But he received

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received the whole 4l. 10s. wages; which at least seems to imply the master's consent or permission. *Burrow, Mansfield. 371. Burrow's Settl. Cas. 433.*

(5) *H. 31 G. 2. Bishop's Hatfield and Saundridge.* A man was hired from *Michaelmas* to *Michaelmas*, for 5l. wages with liberty to let himself for the harvest month, to any other person. He served till the harvest month; and then hired for that month, and received wages for it. During that month, he brewed for his master, and lodged in his master's house at *Saundridge* during the whole year; and served out the remainder of his time, and received his 5l. wages. By the court: This is in effect only hiring for 11 months; and the harvest month is the principal month of the year. It is safest, to keep to the statute. If we allow this, we shall not know where to stop. *Burrow, Mansfield. 495. Burrow's Settl. Cas. 439.*

Hiring for a year, with liberty to be absent during the harvest month.

(6) *M. 1 G. Peperharrow and Frensham.* A person is hired the third of *October*, to serve till *Michaelmas* following; and at *Michaelmas* the master says, stay two or three days, and I will pay you. It is said, that this was adjudged to be a settlement, because fraudulent; and if this were allowed, there would be no such thing as a settlement; for every person would hire a servant two or three days after the quarter day, purely to evade the statute. *Cases of Settl. 80. 10 Mod. 293.*—But Mr. *Foley*, in reporting this case, says, that upon consideration, the court were all of opinion, that this hiring was not sufficient to gain a settlement; for it is not a hiring for a year: And if we once go out of the act, where must we stop? And in *Str. 83.* this case is cited, and it is there said, that this was held to be no settlement.

Hiring a few days after Michaelmas to Michaelmas.

H. 5 G. Coombe and Westwoodhay. *Michaelmas* day was on *Thursday*; and a person was hired upon the *Saturday* following, to serve till *Michaelmas*: And it was held to be insufficient to gain a settlement, being not a hiring for a year. *Str. 143.*

T. 3 G. 2. K. and Westwell. A man was hired three days after *Michaelmas*, to serve till *Michaelmas* following: The justices held this to be a good settlement; but quashed by the court. *1 Barnardist. 354.*

E. 5 G. 2. South Cerney and Coultsbourn. At *Northleach* are annually held two meetings for the hiring of servants, the one on the *Wednesday* before *Michaelmas*, the other on the *Wednesday* after. The pauper was hired on the *Wednesday* after *Michaelmas*, to serve till *Michaelmas* following; which he did. It was urged, that this being a hiring according

ording to the course and custom of the country, was a sufficient settlement. But by the court: This is no settlement upon the face of it. There must be a hiring for a year, and that cannot be dispensed with. *Seff. Caf. V. 1. 156.*

M. 14 G. 2. Newton and Goulesborough, in the West-riding of Yorkshire. *Abraham Greaves* the pauper, on Wednesday after Martinmas day, being the 14th day of November, and the day on which the first statute fair for the publick hiring of servants was held at *Knareborough* in the said riding, was hired by *Richard Ellerbeck* of *Newton*, to serve him from that time till Martinmas day following. Which service he performed accordingly. By the court, This was not a hiring for a year, so as thereby to gain a settlement. *Burrow's Settlm. Caf. 157.*

Hiring with
one's father.

(7) *T. 13 An. Jessop and Missenden. Sarah Barnes* lived with her father for a year as a hired servant, in a little cottage upon the waste, for 10s. a year, besides what she could get by her service and labour. And whether she gained a settlement thereby, was the question. And the whole court held she did; there is no ground of fraud; for it was to live with her father, who might be grown old. *Fol. 142.*

Hiring to spin at
so much a stone.

(8) *T. 13 & 14 G. 2. King's Norton and Cambden. Mary Calcut* was hired for a year, to spin yarn at 18d. a stone; and was to provide herself with meat, drink, washing, and lodging, where she pleased. She spun for her master the whole year, and boarded and lodged at her master's, allowing 2s. a week for the same: But upon her examination she said, that by her contract she thought herself at liberty to play or be absent from her work as long as she pleased, only that she was not at liberty to work for any other master. By the court; This case hath all the requisites of the statute, and is a good settlement. For in fact here is a hiring and a service for a year. And what her apprehension was, or whether she was paid by the year or by the quantity of her work, was immaterial. *Str. 1139. Seff. Caf. V. 2. 146. Burrow's Settl. Caf. 152.*

Hiring to work
11 hours a day,
Sundays excepted.

(9) *E. 31 G. 2. Macclesfield and Sutton. Joseph Bower*, a bastard child, born at *Sutton*, and maintained by the overseers of *Sutton*, was hired, with the consent and direction of his mother (he being then about eight years of age) to *Macclesfield*, to work at a silk mill there, for the term of three years, at 6d. a week for the first year, 9d. a week for the second year, and 13d. a week for the third.

The master was not to find him diet or lodging; and the service was to be only 11 hours in the six working days; and all the rest of the time, as well as on *Sundays*, he was to be at his own liberty and his own master. He continued three years in the said service; but within that time, frequently absented himself from his work, sometimes for a whole day or longer, at other times for several hours in the day; for all which defaults, deductions were made out of his wages. He lodged the whole three years with his mother at *Macclesfield*; who received his wages; which not being sufficient to maintain him, the overseers of *Sutton* contributed 6 d. a week, during the whole time towards his maintenance. The question was, whether this was sufficient to gain a settlement at *Macclesfield*. By lord *Mansfield* Ch. J. Here is no foundation to imagine that this can be a settlement on the ground of an apprenticeship. The only question is, whether it is a settlement as a hiring for a year and service for a year. The pauper was an infant of only eight years of age, at the time of the hiring. Therefore he was not bound by the agreement. Indeed he might have affirmed it; (for the contract of an infant is not absolutely void, but only voidable, at his own election :) But the master could not oblige him to stand to it. Then as to the contract itself, it was only to serve eleven hours in the day of the six working days, but during all the rest of those days, and the whole *Sunday*, the servant was at his own disposal. It is in the nature of a contract from week to week; and it cannot in this case be construed to gain a settlement; and it is plain the parish of *Sutton* did not understand it in this light, having contributed to the child's maintenance during the whole three years. And the order adjudging it to be a settlement at *Macclesfield* was quashed. *Burrow, Mansfield. 564. Burrow's Settl. Cas. 458.*

(10) T. 6 & 7 G. 2. *Lidney and Stroude. Martha Brewer* Hiring conditionally. was hired to *William Wake* in the parish of *Stroude*, for a quarter of a year; and if her master and she liked one another, she was to continue for a year, to have 3 l. for her year's wages. She entered into the said service, and continued therein one whole year, and received the said wages of 3 l. It was argued, that as it was in the election of either party, during the first quarter, whether she should continue or not, she consequently could not be originally hired for a year. But the court held this conditional hiring to be a good hiring for a year; since the master and she did

like one another, and a year's service was actually performed under it. *Burrow's Settl. Caf. 1.*

H. 8 G. 2. New Windsor and Chepping Wycomb. Diana Brooks was hired to colonel Meyrick at Thorpe; and was to go into her service a month upon liking; and was to have 5*l.* a year wages; but was to go away from her said service on a month's wages or a month's warning on either side. She continued near two years in her said service, without any other hiring; and received her wages quarterly. This, by the unanimous opinion of the court, is a hiring for a year at Thorpe: And she gained a settlement there. *Burrow's Settl. Caf. 19.*

H. 16 G. 2. Atherton and Barton. Ralph Harrison was hired for a year to Thomas Barlow of Barton, at 4*l.* wages, payable quarterly. And it was agreed between them, at the time of the hiring, that either of them should be at liberty to determine the contract, at the end of any quarter of the said year, on a month's notice. But no such notice was ever given by either; and the servant continued in his said master's service in Barton the whole year. The servant declared at the time of the hiring, that the reason of the said hiring being made determinable at the end of every quarter upon such notice as aforesaid, was, that he would not be hired so as to lose his former settlement. But by the court unanimously and clearly, This is a good settlement in Barton. *Burrow's Settlement. Caf. 203.*

H. 22 G. 2. St. Ebbs and Holywell. Two justices remove Caleb Guy from Holywell to St. Ebbs. And the sessions upon appeal confirm that order. The case was, the said Caleb Guy was hired to Thomas White of Holywell thus: He was to come for a quarter of a year, and to have after the rate of 20*s.* a year; and if he and his master liked each other, he was to continue. He did continue a year and a half above the said quarter, without any farther or other hiring, and received his wages as he had occasion for them. It was moved to quash these orders, for that the settlement was in Holywell, by this hiring and service: For a conditional hiring is a hiring for a year, provided the condition be performed. And a rule was made to shew cause. But no cause was shewed. And the rule was made absolute. *Burrow's Settl. Caf. 289.*

T. 24 & 25 G. 2. Ozelworth and Wotton under Edge. William Hewett, settled in Ozelworth, agreed with Thomas Palfser of Wotton under Edge, cloth-worker, to serve him in

the said business for three years, at so much a week. He was to work 12 hours in a day; and if more, was to have a penny for each hour over. Sixpence a week was to be retained as a deposit; which was to be repaid to *Hewett* if he performed the agreement, or if *Palsor* should discharge him before the end of the three years; but to be kept by *Palsor*, if *Hewett* should quit the said service before the end of the said term. And it was understood between them, that *Palsor* might turn *Hewett* out of his service at any time during the term, paying him the sixpences retained. *Hewett* worked under the agreement for about six months; and then, being ill, absented himself about three months; and then returned, and was received by *Palsor*; and continued to work for him under the said agreement, till the time of his being removed by the order, being for about three quarters of a year after his return. During the whole time, *Hewett* lodged in the parish of *Wotton under Edge*, but not in *Palsor*'s house. By the court: This is a settlement at *Wotton under Edge*. Here is an actual hiring for three years, and a service under it for one year and a quarter. Besides, the two justices removed him whilst he was actually in his master's service. *Burrow's Settl. Caf.* 302.

(11) *E. 13 G. 2. Wandsworth and Putney.* A boy came to live with Mr. *Falkner*, without any hiring; and then his master told him, that if he staid a year and behaved well, he would give him a livery and wages the next year. He lived there one year and four months, and received a guinea and a half wages. The court inclined to think, that this was a conditional hiring, and that the boy's service was an assent in fact, and that it gained a settlement; but referred the matter back to the sessions to be more fully stated: *Sess. C. V. 2. 188.*

Hiring by implication.

(12) *M. 13 G. Gregory Stoke and Pitminster.* A young woman lived with her grandmother for four years, on an allowance of meat, drink, washing, and lodging. But there appearing no contract betwixt the grandmother and the girl, but that she might have left her grandmother at any time, it was adjudged not a hiring within the statute. *Sess. C. V. 2. 120.*

Service where no contract did appear.

H. 33 G. 2. Corfe Castle and Weyhill. Order specially stated, That it appeared on the evidence of the pauper (the only witness produced on either side) that about the year 1719, one *Robert Pyke*, esquire, took the pauper (being then about 8 years of age) into his family, from charity, and gave him meat, drink, lodging, and cloaths, while

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he continued with him, which was about six years, of which the four last years were in the parish of *Weyhill*. That neither at nor before the time of the said Mr. Pyke's taking the pauper into his family, nor at any time after, was there any contract between the said parties, in relation to the pauper's service of the said Mr. Pyke or his continuance with him, or to any wages or other gratuity to be paid him for the same. That during his continuance with the said Mr. Pyke, he was employed in running of errands, and doing whatsoever the said Mr. Pyke or his servants thought fit to bid him. That no wages were ever paid or given to him. And that in the pauper's apprehension, he was, during all the time aforesaid, at liberty to quit the said Mr. Pyke, or the said Mr. Pyke to turn him off, as either party should think fit.—The sessions were of opinion, that at this distance of time, a hiring for a year, between the said Mr. Pyke and the pauper or his father ought to be presumed; and therefore they confirm the order of the two justices for sending him to *Weyhill*.—It was urged, in support of the orders, that upon a regular service for above a year, a hiring shall be presumed; that wages are not necessary; that the pauper's apprehension doth not vary the case; that the witness speaks to a transaction when he was but eight years of age; and he might have been hired out by his father, though not by himself.—But by the court; It is clear here was no hiring at all, no contract, but he was taken out of charity, a child of eight years of age, to run on errands, and do whatever he was bid, and left Mr. Pyke when he came of 14 years of age, and was capable of doing more service. And it is expressly stated, that there was no contract. Indeed, where there is a hiring stated, the court will presume it to have been a regular one, unless the contrary appears; and that was the case of *Crediton* and *Wincaunton*, *H. 24 G. 2*. A general hiring was there stated; but here was no hiring at all.—And both the orders were quashed. *Burrow, Mansfield. 928. Burrow's Settl. Cas. 491.*

M. 4 G. 3. St. Peter's and Holy Trinity in Dorchester. The pauper *John Milwood* made an agreement with his stepfather, to live with his stepfather in his house, to work with him at his trade of a button-maker, and to be paid at the rate of one penny for every gross of buttons he should make, deducting at the rate of 5s. a week for his meat, drink, washing, and lodging. Under this agreement he lived with him four or five years in the parish of

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Holy Trinity. It was urged, that this was a hiring for a year by implication ; for an indefinite hiring is a hiring for a year. By lord *Mansfield* : This is the case of a workman hired to work by the piece. It is not like any of the cases where there was a hiring for a year. Indeed hiring in general and indefinitely gives a presumption of a hiring for a year, where the nature of the service and subsequent facts concur to render it probable that it was so meant. But the nature of the present service is quite otherwise. It is very clear in this case, that there was no hiring for a year, express or implied. *Burrow's Settl. Cas.*

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Unless such person shall continue and abide in the same service] What shall be deemed a service for a year.
What shall be deemed the *same service* within the meaning of this explanatory statute, hath been much controverted. Concerning which there have been the following resolutions :

(1) In the case of *Dunsford and Ridgwick, M. 9 An. Mr. Foley* says, the court declared, that there ought to be one intire contract, and one intire service for a year, pursuant to that contract. *Foley 133.* And Mr. *Blackerby*, in reciting that case, says, it was then held, that there must be one intire hiring, and one intire service in pursuance of such hiring, for a whole year, that must make a settlement. *Black. 244.*—But it must be observed, that this was not properly the point in question. For the question there was, whether a hiring for two half years should be deemed a sufficient hiring, and not what should be a sufficient service under such hiring.

We proceed therefore to the case of the inhabitants of *South Moulton, H. 10 W.* A maid servant was hired for half a year ; which time she served : And then was hired for a year, and served half of that. *Rokeby, Turton, and Gould (Holt Ch. J. being absent)* held it to be a settlement ; because the statute designed only that the party should serve a year. *L. Raym. 426.*

Another case in the same term was that of *Overton and Stevenston*, which was thus : *Bridget Bayly*, before the 25th day of *March 1697*, was a settled inhabitant in the parish of *Overton* ; and on or about the said 25th day of *March*, she contracted with one *John Orpwood* of *Stevenson*, for the wages of 20s. to serve him from the said 25th day of *March 1697*, till *Michaelmas* then next following ; which time she served accordingly. And at the said *Michaelmas*, the said *Orpwood* contracted with the said *Bridget*, from the said *Michaelmas* for one year ensuing, for the wages

of 30s. And the said *Bridget*, according to the last mentioned contract, remained with the said *Orpwood*, till some time in the month of *April* 1698; in which month, by the mutual consent of the said *Bridget* and *Orpwood*, she left her service, and he paid her the proportion of wages then due. The sessions thinking the abovementioned hire, and service aforesaid, continuing for the time of more than one whole year, to be a good settlement, confirmed the order of the two justices for sending her to *Steventon*.—And of this opinion was the court: And the orders were confirmed. *Burrow's Settl. Caf.* 549.

E. 1 G. Brightwell and Westhallam. There was a hiring and service from three weeks after *Michaelmas* to *Michaelmas*, and then a hiring for a year, and service for 11 months. The Ch. J. said, If there was a service for a year, on a hiring from week to week, and then a hiring for a year, and serving for forty days, that he should adjudge that a settlement. The reason is, because till the last statute was made, a hiring for a year, and forty days service, made a settlement; in regard that the hiring for a year shewed that the person was not likely to become chargeable, for that he was able to work. So forty days is a good settlement to an apprentice, in respect of his skill and art, by which he is supposed unlikely to become chargeable. So a person that has paid parish dues, or served offices in a parish, gains a settlement by 40 days, because he is supposed a person of substance, unlikely to become chargeable. But the late act requiring service for a year, as well as an hiring, we think it sufficient if the words be answered, considering this with the design of the former statutes. *Seff. C. V. 1. 87. Foley* 143.

M. 1 G. 2. K. and Aynhoe. The pauper was hired in *Bicester* from *Christmas* to *Michaelmas*, and served till *Michaelmas*; then was hired for a year, and served till midsummer. And this was adjudged to gain a settlement in *Bicester*. There were cited for it, the cases of *Overton* and *Steventon*, and of *Brightwell* and *Westhallam*. Lord Ch. J. *Raymond* said, the case of *Westhallam* was express to the point, and he would not break into it; but if it had been *res integra*, or a case not adjudged before, he should have thought it ill. Here the service was made previous to the hiring for a year. The greater part of the judges thought this case to be against the statute, but that they were more strongly bound by the precedent; and were unwilling to set aside a resolution solemnly adjudged, though

though not according to their own opinion. *Stiff. C.V. 2.*
119. *Fol. 144.*

M. 11 G. 2. Fifehead Magdalen and West Stower. William Trim hired himself to a master at *West Stower*, from *Midsummer* to *Lady-day*, being 3 quarters of a year, for 40s. At *Lady-day*, he received his wages of 40s. and left his master's service, and then went to his father's house in *West Stower*; and in about an hour returned to his master, and agreed with him for a year, at 3l. 10s. a year, and lived with his master half a year in pursuance of the second agreement. When he went from his master's house, he had no cloaths but what he wore, except a shirt, which he left at his master's house. It was urged, that this was no settlement, for that there should be first a hiring for a year, and then a service for a year under that hiring: Besides, here was a discontinuance; the first contract was at an end, before the second contract was entred upon; so that it was not a continuing in the same service. Lord chief justice *Lee* said, he remembered the resolution was first come into in lord chief justice *Parker's* time, that a hiring for a year and a service for a year were sufficient to gain a settlement, though all the service should not be under the same contract; and that *Sir Thomas Powys* (who was just come into the court) very much boggled at it: But now, he added, the rule is established, that if there is a hiring for a year, and a service for a year, it will gain a settlement, tho' the whole service is not under the first hiring. And in this case, the absence for an hour, which was only to consult his father about a new contract, ought not to be looked upon as a discontinuance. Upon every new contract, there is a sort of discontinuance. The last day of the former contract was the first day of the second service. And this was only an hour's absence within the space of that same day. Therefore he remained a servant during the whole time of the completion of his year. *Burrow's Sattl. Cas. 116.*

M. 22 G. 2. Wrinton and Chewstoke. Anne Stokes, the pauper, when 13 years of age, went into *Chew Magna* to the house of her aunt; and soon afterwards went to *Winford*, and worked with one *Nicholas Walker* clothworker, in the business of burling cloths, by a weekly hiring or agreement at the weekly wages of 1s. 6s. each week in the winter, and 2s. each week in summer. On *Saturday* in each week, *Nicholas Walker*, when he paid the pauper her wages for that week, said, to her, that she should
come

come the week following. Which she accordingly did, and renewed the contract for the week ensuing, in the same method. She continued to work with the said *Nicholas Walker* in *Winford*, in the manner abovesaid, for a year and an half; but during all that time, constantly returned in the evening and lodged at her aunt's in *Chew Magna*, and also resided with her aunt there on *Sundays*. On the last *Saturday* of the said service, the pauper conventioned to serve the said *Nicholas Walker* for a year, at 1 l. 10 s. wages; entred immediately into the said service, and continued therein eleven months in *Winford*. By the court: The pauper did not acquire a settlement by this service in *Winford*. For tho' a subsequent service for less than a year, performed under a hiring for a year, may be coupled to a prior service which was not performed under a hiring for a year, provided it be a continuance of the same service; yet the subsequent service cannot, in the present case, be coupled with the former, because the former hiring was not of the same kind with the latter: The former was as a day labourer, or weekly labourer at most; not as a hired servant, who is part of the master's family. *Burrow's Settl. Cas.* 280.

H. 6 G. 3. Underbarrow and Bradley-Field v. Crosthwaite and Lythe. Two justices make an order for the removal of *Anne Kellet* from the township of *Underbarrow* and *Bradley-Field* to the township of *Crosthwaite* and *Lythe*. The sessions, upon appeal, discharge that order, and state specially: That the pauper *Anne Kellet* hired himself at *Christmas* to *John Thompson* of *Crosthwaite* and *Lythe*, till *Whitsuntide* then next following; which time she served. At the same *Whitsuntide* she hired herself to the said *John Thompson* for one year, and continued in the said service till the beginning of *March* following, when she and her master parted by consent. The sessions were of opinion, that the said *Anne Kellet* gained no settlement by the said service in *Crosthwaite* and *Lythe*, and therefore quashed the order of the two justices, subject nevertheless to the opinion of this court. It was moved to quash the order of sessions, and to affirm the original order; for that there was, upon the state of the facts, a hiring for a year and a service for a year, when both were coupled together; though indeed the first hiring was for less than a year, and the second service was likewise for less than a year. On shewing cause, it was urged, that the two leading cases of *South Moulton* and of *Overton* and

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Stevenson were determined upon facts prior to the explanatory statute of the 8 & 9 *W.* before which statute, a hiring for a year, and a service for 40 days gained a settlement. And it was observed, that in the case of *Aynhoe*, lord *Raymond* and also Mr. justice *Page* declared, that if it had been then *res integra*, they should have adjudged it to be no settlement in *Bicester*: And now it appears to be so; as the two supposed precedents were in fact no precedents at all, being prior to the statute of the 8 & 9 *W.* By the court: The authority of these cases will be just the same, whether the facts were prior to the statute or not: Because the court determined them as upon facts subsequent to the statute. And there having been many determinations the other way, the court were unanimously of opinion, that for the sake of certainty, it is best to adhere to settled determinations. Though there might be room for great doubt upon this point, if the matter were again open; yet the rule *stare decisis*, is always proper, and especially in these cases of settlements. And the order of sessions was quashed, and the original order affirmed. *Burrow's Sett. Cas.* 545. [Note, Upon searching the records it hath appeared, that the case of *Bridget Bayly* was after the explanatory statute of the 8 & 9 *W.* And the mistake did arise from the errors of the several reporters of that case, as to the particular times of her hiring and service. The other case, *viz.* of *South Moulton*, is not to be found upon the file: And the report thereof in lord *Raymond* is so very imperfect, that nothing can with certainty be concluded from it. Mr. *Burrow* takes notice, that it is not impossible that this case of *South Moulton* may be the very same with that of *Overton*. Which conjecture seems to be supported by this observation, that the reporters of both the cases express that *Holt* chief justice was absent. And there was no other determination in that term, according to the reports thereof in lord *Raymond*, wherein it doth not expressly appear that *Holt* chief justice was present.]

(2) *E. 4 G. Ivinghoe and Solebury.* A person was hired for a year to one *Knight*, who rented a farm in *Ivinghoe*, and lived with him half a year: The master lets the farm to one *Smith*, and the servant lives the residue of the year with *Smith* in the farm, without any words passed about dissolving the contract with *Knight*, or making any new contract with *Smith*. And at the end of the year, the second master paid him his wages. The question was, Same service, but not with the same master.

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If this shall be deemed the *same service*, so as to gain a settlement? By *Pratt Ch. J.* and the court; This is a good settlement: If a master command his servant to live with another for a certain time, it is a service to the first master; and here being no new contract, it is carrying on the service of the first master. And the subsequent master paying his wages did not alter the case; for the contract not being destroyed, he might have brought an action against the first master. *Sess. G. V. 1. 121. Cases of S. 109. Str. 90.*

E. 15 G. 2. Ladock and St. Enoder. John Roberts was hired for a year in *Ladock*. His master died within the year, leaving *William Huddy* of *St. Enoder* his executor. The executor asked the servant, if he was willing to serve out the year with him. The servant agreed to it, and did serve the executor in *St. Enoder* during the remainder of the year. By the court: This is a continuance of the same service; the contract was not dissolved by the death of the master; and the servant gained a settlement in *St. Enoder*. And this is a stronger case than that of *Ivinghoe*, the assignee of the farm in that case being a mere stranger; whereas this was the case of an executor, on whom the law casts a privity of contract. *Burrow's Settl. Cas. 179.*

Same service, but
not in the same
place.

(3) *E. 11 G. K. and Whitechapel.* A person was hired for five years, to work at a glass-house in *Whitechapel*, at the rate of 10s. a week; but never lodged with his master in the house any part of the time, but at another house in the parish: By the court, He has gained a settlement there; for being hired to serve above a year, and having served and resided in the same parish pursuant to such hiring, he hath fully complied with the statute, and it is not material where he lodged, so that it were within the parish. *Sess. C. V. 2. 114. Foley 146.*

T. 12 An. Silvertown and Ashton. A servant maid was hired for a year in the parish of *Ashton*, where she served half a year; then her master, and she with him, removed to the parish of *Patshall*, where her master took another farm; the servant continued with him in the parish of *Patshall* for the other half year: And the question was, Whether she gained any settlement in either of these places; and if she did, in which of them? By the court; Here is what the act requires, a hiring for a year, and a service for a year. For it is the same service; and the statute doth not tie it down to one place. If a person is hired to a master in one parish, and goes with him into another

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another parish, and serves him for one whole year; the parish he continues last in for 40 days before the end of his year, is the place of his settlement: and the reason why the 40 days gain a settlement is, because he comes there with his master, and you cannot remove him from his master, and having continued with him 40 days unremoveable, he gains a settlement. *Foley 188. Cases of S. 23.*

T. 8 G. St. Peter's in Oxford and Chepping Wycomb. Upon a special order of sessions it appeared, that the master of the *Oxford* stage coach hired a servant for a year, to stay in an inn in *Wycomb* where the coach baited, and to take care of the horses: he lived there for the whole year, and the master all the while lived in *Oxford*. The question was, Where that servant gains a settlement, or whether any by that service? And by the whole court, He gained a settlement in *Chepping Wycomb*, though his master never lived there. *Str. 528. Foley 200.*

H. 1 G. Bishop's Hatfield and St. Peter's in St. Alban's. Two justices remove one *Langley* from *Bishop's Hatfield* to *St. Peter's*. Upon appeal, the matter was stated specially, that this *Langley* was a huntsman to one *Mr. Arnold*, and that *Mr. Arnold* lived sometimes in *Westminster*, and sometimes, at his house in *Northamptonshire*, but that *Mr. Arnold* had no settlement in *St. Peter's*; and that this *Langley* served the last 40 days of his year in the parish of *St. Peter's* with his master *Mr. Arnold*: which the justices at sessions thought gained no settlement for *Langley* in *St. Peter's*, and quashed the order of two justices. But the court of king's bench, upon the orders being removed by *certiorari*, quashed the order of sessions, and held *Langley's* settlement to be in *St. Peter's*, by serving his master *Mr. Arnold* the last 40 days of his year there, though his master *Arnold* had no settlement there. *Foley 197. Str. 794.*

T. 8 G. St. Peter's in Oxford and Fawley. *Mrs. Cook* lived with her son in law *Dr. Clavering* at *Christ Church*, and hired a servant for a year, who was settled in *St. Peter's*. *Mrs. Cook* afterwards goes to *Fawley* upon a visit; and she, with her servant, staid there for three months, and afterwards came back again to *Christ Church*, where the servant ended the year's service, being not 40 days after her return. The question was, Whether this servant gained any settlement at *Fawley*, living with her mistress who was only a visitor? And by the whole court: The settlement of the servant doth not at all depend on the settlement of the master; for if a master hire a servant for

a year, and after remove from one parish to another during that year, it may be properly said that the servant is hired in every parish he shall go into with his master; and the parish where he lives with his master the last 40 days of his year, is the place of his settlement. And it is not material to the servant, whether the master goes there under the capacity of gaining a settlement for himself or not; the servant goes there in the capacity of a servant; and it is like the case of a school-boy; he gains no settlement, but the servant that waits upon him will. And it was adjudged that the servant was settled at *Fawley*. *Caf. of Settl.* 139. *Foley* 194. *Str.* 524.

E. 30 G. 2. Alton and Elvetham. This case was argued the last term, and the court took time to consider of it; and this term, lord *Mansfield* Ch. J. delivered the resolution of the court: This was an order made by two justices for the removal of the wife of the pauper and four children from the parish of *Elvetham* to the parish of *Alton*; and upon appeal to the sessions, the same was there confirmed: But the sessions state the fact specially, That the parish of *Alton* in the year 1722, gave a certificate to the father of the pauper to the parish of *Elvetham*; under which, the father went to the parish of *Elvetham*, and has dwelt there ever since: then it states the pauper, and other children being born there, and that the pauper on the 29th of *August* 1734 was hired for a year as a covenant servant by Sir *Henry Calthorp* at *Elvetham*, and served that year out in that parish; that at the expiration of this year, he was hired again as a covenant servant by him for another year, and served that year, but it happened that the last 40 days of the second year were at *Scarborough* in *Yorkshire*; that he did not at the end of the second year quit the service, but on the 29th of *August* 1736, he applied to his master to make a new agreement for another year, when the master said it would be time enough when they returned home to *Elvetham*; whereupon he continued for about 6 weeks with his master at *Scarborough*, when they returned home to *Elvetham*; then he was hired for a third year, and served that year out in *Elvetham*, and continued in his service for seven years more, and his wages were advanced every year; and afterwards he quitted that service, and married, and had four children mentioned in the order, which was, for removing the wife and four children from *Elvetham* (the husband having left his family) to *Alton* which gave the certificate.——The justices considered him serving altogether in *Elvetham*, and that he could not

gain a settlement there. It has been contended, that they were in the wrong, for he ought to be considered as having gained a settlement in *Elvetham*, notwithstanding the certificate. That is not contended for directly, because service for a year of a certificate person will not gain a settlement; therefore it is indirectly contended for, that he has gained a settlement: His master goes (probably for his health) to *Scarborough*, and happens to stay there 40 days; and it is contended, that the servant then gained a settlement at *Scarborough*, which discharged the certificate, and then he afterwards gained a settlement at *Elvetham*.—The general question is, Whether this accidental service of 40 days at *Scarborough* acquired a settlement to the servant? It is immaterial, whether the master has or has not a settlement in the place where the service is; because that will not prevent the servant gaining a settlement: But the objection here is, whether the 40 days at *Scarborough* are to be considered barely as a continuation of the service at *Elvetham*, or a new *bona fide* service at *Scarborough*? There are several cases, where a servant, though locally absent, may yet be considered as continuing his service in the place to which he was hired. So if a servant was ill, and went to *Bath*, by the consent of the master, that would be a continuation of the service. Therefore the consideration here is, of convenience and inconvenience, of justice and injustice, which will have great weight, unless there are authorities which stand in the way. I will consider this, first, under the circumstances of the case; then, secondly, I will consider the authorities. The general ground upon which this must be determined, if there are no authorities, is this; Substantially, the master lived at *Elvetham*; he hired his servant to be a servant there; the parish was jealous of the servant coming in there, and got a certificate from *Alton*. Sir Henry happens to go to *Scarborough*, as a sojourner for a particular purpose, not as an inhabitant. When they are to make an agreement for a third year, they both consider themselves as absent from home. It would be perilous for these publick places of resort, if such a service were to gain a settlement. Besides, what fraud would be brought upon parishes, if settlements might be gained in this manner, when a parish trusts to certificates? Suppose a person in service has an accident upon the road by breaking a leg, and he stays 40 days at a place, shall that be a settlement? Suppose he stays 40 days with his master in a sea-port being wind-bound,

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would that gain a settlement? The master's abode here is at *Elvetham*, which I lay great stress on. The domicile (as the Civilians call it) of *Sir Henry* was not at *Scarborough*.—I shall next consider the authorities cited. The principal of which was the case of *St. Peter's* in *Oxford* and *Fawley* (*Str.* 524.) The court will pay regard to former determinations for the sake of certainty. But if an authority were single, and plainly productive of inconvenience, the court would in such case over-rule it. But the present authority does not at all contradict the doctrine I have been laying down. This case was cited to shew, that a passage or transitory residence might gain a settlement. I shall state the case as it is in *Strange*; where it is said, that in the case of *Rufford* it was not doubted, but that hiring into an extraparochial place would gain a settlement. And so *Powell J.* somewhere said, that if a servant was hired for a year in *Ireland*, and the service was performed here, it would gain a settlement. But here I cannot but observe, that it is a great pity that cases should get abroad under the sanction of great names, which being taken from notes that gentlemen took only for their own use, and not by any publick officer appointed for that purpose, are incorrect often in the state of them. The present case, as reported in *Strange*, is most certainly misreported. It is stated that the pauper was hired for a year into *Church-church*, without saying how or under what circumstances her mistress lived there; and that her mistress went upon a visit to *Fawley-court*. Now her mistress being a single woman could not possibly have any abode in *Christ-church* but as a visitor or friend. And it is farther said, that the only doubt was, whether the settlement gained at *Christ-church* was superseded or not. That could not possibly be so. For she could by no means gain a settlement in *Christ church*, which was not only an extraparochial place, but a single house only, having been once a monastery, being in nature of one of the king's palaces, which may be extraparochial. I mention this, to shew the incorrectness of cases, which cannot be relied on. This case is also in *Foley* 215. and *Cases of Settl.* 139. reported differently. But all of them together may serve to help us to the truth, and which upon inquiry I find to be this: Mrs. *Cook* the mistress of the servant, had two daughters; one, married to Dr. *Clavering* dean of *Christ-church*; the other, to Mr. *Freeman* who lived at *Fawley-court*. And she lived alternately with these two gentlemen her sons in law; and was as much at *Fawley*

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ley court as at *Christ-church*, and (as I observed before) it was not possible the servant should be settled at *Christ-church*, because it was an extraparochial single house. This was, I think, the only material case cited at bar; but there is another which I have had mentioned to me, *Bishop's Hatfield* and *St. Peter's* in *St. Alban's* (*Foley* 197.), where a huntsman was hired by one Mr. *Arnold*, who lived sometimes in *Westminster*, and sometimes at *Northampton*, and the servant resided, where the hounds were kept, at *St. Alban's*; and the only question was, whether the servant could acquire a settlement there by such service, as his master had none: and there was no doubt but he could; for he came exactly within the case of a stage coachman, who was hired to serve at *Wycomb*, though the master lived at *Oxford*; where it was held, that the servant's settlement does not at all depend upon the master's. But that case was very different from the present; for the question was not, whether there was a continuance of service with the master in *Westminster* or *Northampton*, but he was settled by living in that place with the hounds; and the master, I suppose, might be probably a member of parliament; and might have a house to go to for hunting merely, which is a very common case in the neighbourhood of *London*. However there is no precision in the case on which the court can rely; and upon the whole I think it not at all inconsistent with our present resolution; which is, that in the present case the whole of the service was only a continuation of the service at *Elvetham*. However I would have it observed in the present case, that I lay great stress on both the master and servant considering *Elvetham* as their home, as also upon the precedent and subsequent service, and upon the circumstances of the certificate.—There was another objection at bar, but not relied on; that it does not appear but that the husband may be living, and he is not removed, and may have gained a settlement since. But this the court will not presume. If he is living, they must remove him after to his family. And both the orders were confirmed.

And the difference between this case and that of *St. Peter's* in *Oxford* and *Fawley*, seemeth to be this; that a visitor, during the time of the visit, may be considered as part of the family of the person visited, and hath there *pro tempore* his home and place of abode; but a person at *Scarborough* or other such like place of publick resort, under the circumstances abovementioned, is only a sojourner, or in the nature of a traveller, or as a guest in an inn, and

cannot in any sense within the words of the statute be looked upon as *coming to settle* there.

[Note, with respect to the aforesaid case of *St. Peter's* and *Fawley*, Mr. *Burrow* says, there having been so much doubt and misapprehension concerning it, he has had the curiosity to transcribe it from the original record : which is as follows.—Two justices removed *Mary Norris* from the parish of *St. Peter in the East* in *Oxford*, to the parish of *Faaley* in the county of *Oxford* aforesaid. Which order was discharged by the sessions, upon appeal ; it appearing (as it is stated in the order of sessions) that the said *Mary Norris* was hired at *Christ-church* in *Oxford*, an extraparo-chial place, on the 16th of *May* 1717, for one year to Mrs. *Cooke*, who then lived, and ever since hath lived, with her son in law Dr. *Clavering*, canon of *Christ-church* college aforesaid, as a sojourner or boarder ; and continued in her service there till the month of——in the same year ; when Mrs. *Cooke* went, upon a visit, to her son Mr. *Freeman's*, in the parish of *Faaley* aforesaid, where she continued three months, upon the said visit ; and her said servant *Mary Norris* was with her at the said Mr. *Freeman's*, and continued there in her service all the three months. At the end of which the mistress returned to *Christ-church*, and there the service expired, she having served her mistress the whole year, in pursuance of the first hiring : And the order of sessions was quashed, and the original order affirmed. *Burrow, Mansfield*, 312. *Bur. Settl. Cas.* 422.]

Absence during
the service.

(4) *E. 17 G. 2. Beccles and Lowestoft*. A person was hired to a blacksmith for a year, at 3l. a year. During the year, the master gave him leave to work with another smith for three days, with another for a week, and with a third for a fortnight ; and agreed that the servant should have the advantage of it. After which, he returned and staid out the year, and the master by his consent deducted the proportion of wages for the time he was away. The sessions held no settlement was gained, the first contract being dissolved. But by the court ; The order must be quashed : for this is not a dissolution of the contract, but a licence to be absent. Service by the master's consent with another person is service of the master. But in this case, if it had been without the master's consent, yet the absence had been dispensed with by the master's taking him again. *Str.* 1207. *Burrow's Settl. Cas.* 230.

T. 26 & 27 G. 2. Hanbury and Tardebigg. The servant was hired for a year at *Michaelmas*, but did not come

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to his service till three days after *Michaelmas* day, and served till the day after *Michaelmas* in the next year. He was absent about two or three days at a time, in the whole a fortnight, without consent, but was always received again. At going away, he agreed to make a deduction of 6s. 6d. of his wages, for the time he was absent. By the court: He gained a settlement at *Tardbigg*. This court hath not been so strict in determining upon the service, as they have been upon the hiring. It hath often been held, that though a servant has been absent for a time, yet his master taking him again purges his absence. And there is no difference between an absence in the beginning and in the middle of the service; for he is a servant from the time of hiring. *Burrow's Settl. Caf.* 322.

M. 1 G. Pawlett and Burnham. A person was a covenant servant for a year, but went away three weeks before his year was out, by his own and his master's consent; and was abated 6s. of his year's wages for it. It was objected, that being a covenant servant, this doth import that it was by deed, and then the consent cannot discharge the covenant. By the court: Here is no fraud expressed or implied. It is not within the words of the act, nor the meaning. Can a man compel his servant to gain a settlement *nolens volens*? As to the covenant being by deed, and so the service continuing, perhaps he might bring an action on the covenant, and as to that point the service continued; but not as to gaining a settlement, where the statute saith he must serve for a year, which is not in this case. *Cases of Settlm.* 84. *Foley* 187. *Seff. Cases V. 1.* 71.

E. 7 G. K. and Iship. A person is hired for a year; and in the year's service his master gives him leave to go and see his mother for one day, and he tarried three days, and then came home again, and his master took him into his service as before. It was objected, that his staying to see his mother without leave was a desertion of the service, and the time he stayed away takes so much off from a complete service for a year. But by the court: This will not prevent the settlement; for the master's taking him again is a purgation of the offence, and no interruption of his service.—In the same case it was stated, that the servant for six days was sick, and incapable of any service: And it was objected, that therefore he could not gain a settlement, which is to be acquired only by a service for a year; but here he did not serve for six days, and so there wants so much of a service for a year. But

by the court: A servant that lies thus under the visitation of God, which befalls him not through his own default, is and must be taken to be all the while in the service of his master; and if this exception were to be allowed, it might prevent all the settlements in the kingdom.—Another circumstance in the same case was this: The servant, three or four days before his service expired, desired leave of his master to go to a fair, to hire himself into another service. His master refused, and told him, if he went, he should not come into his house again. The servant went notwithstanding; and did not return until the time of his service was expired. By the court: This is nevertheless a settlement. The request of the servant is a reasonable request; and the law will not suffer a master to shew himself so inhuman to his servant. A master cannot turn off his servant two or three days before the year expires; if he doth, the service in point of law continues, and he gains a settlement notwithstanding. *Cases of Settl.* 129. *Str.* 423.

T. 8 G. Eastland and Westhorpeley. A servant was hired for a year; and the day before the year expired, the master told him, that to prevent his gaining a settlement in that parish, he should go away immediately; which the servant refused to do, insisting to serve out the year; whereupon the master turned him out of doors. The court held this to be such a fraud in the master, as should not prevent the settlement of the servant. *Str.* 526.

H. 4 G. 2. K. and Preston. A person served under a hiring his whole year within 5 days, and then left his master by consent, the parish officers where he lived having first given him two guineas to leave the parish. The justices held this to be no settlement, and stated the case specially. It was objected, that this departure was fraudulent. But by the court: The justices might upon evidence have examined into that point; and if they had thought that his departure was fraudulent, they would without question have stated it to have been so; but that not being done, we cannot intend any fraud, nor that the party hath gained any settlement, it being agreed on all sides, that he hath not served his year. *Nels. Just. Tit. Poor. Burrow's Settl. Cas.* 69.

M. 9 G. 2. Syford and Castlechurch. A person was hired for a year, which he served till the last 12 days, when he went away with his master's leave, and staid till after the year was up, when he returned for his cloaths, and was paid the whole year's wages. And on considera-

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tion, that if they once allowed this absence for 12 days at the end of the year (which differed from an absence in the middle of the year, which was purged by taking him again) they should not know where to stop, it was determined that he gained no settlement. In this case the servant went from his service before the year was out, and the master consented to it; which is a plain determination of the service within the year. *Str.* 1022. *Burrow's Settl. Cas.* 68.

T. 19 *G.* 2. *St. Peter's* in *Sandwich* and *Goodneston*. *William Markham* was hired for a year, and lived with and served his master in *Northbourne* till within three weeks of the end of the year, when he asked leave of his master to go to the herring fishery. The master consented, if he could get a man to do the master's work to his liking. *Markham* did so, and paid the man. *Markham* went to sea, and returned at the end of the herring fishery, which was about three weeks after the end of his year. The master paid him all his year's wages. By the court: This was no dissolution of the contract; *Markham* gained a settlement at *Northbourne*; and as the master had the benefit of the contract during the whole year, so ought the servant also. *Str.* 1232. *Burrow's Settl. Cas.* 251.

E. 31 *G.* 2. *Caverswall* and *Trentham*. *Samuel Brassington* the pauper was hired for a year to *Edward Brassington* at *Trentham*, and served him till within three weeks of the end of the year; when, on some disputes arising betwixt him and his master, he was with his own consent, discharged from his service; and received all his wages, except what was deducted for the three weeks. As soon as he left his service, he went to *London*, and was absent about a fortnight. Upon his return, at *Mrs. Brassington's* request (his master being then from home) he went again into their service; and within a week after the expiration of the first year, his master hired him again for another year; and he served him in *Trentham* for about six months of that second year, and then left him. By the court: Here was a discontinuance. The first contract was absolutely dissolved, and so continued for a fortnight or three weeks. Therefore this last service cannot be connected with the former part of the year; and consequently no settlement was gained at *Trentham*. *Burrow, Mansfield.* 391. *Burrow's Settl. Cas.* 461.

E. 32 *G.* 2. *Kislingbury* and *Neiber Hyford*. It was stated, that *John Gare* the pauper, was hired for a year to widow *Bliss* of *Farthingstone*; and continued in the said

service until five weeks before the end of the year; when, with his mistress's leave, he parted with her, and went to work at *Kissingbury*, and staid there the said five weeks. After the end of the year, the said *Gare* went to his said mistress *Bliss* for his year's wages; the whole whereof she laid down to him, and he thereout voluntarily deducted 10s. for his five weeks absence, being the same sum he had earned and received for his five weeks at *Kissingbury*. The original contract was not dissolved, nor any new one made with his mistress *Bliss*, save as aforesaid. And if his mistress had, during the said five weeks, required him to return to her, he would have done so. It was objected, that this could not be a settlement, as there wanted five weeks of the service. By lord *Mansfield* and the court: The question turns singly upon this, Whether his absence for five weeks was a dissolution of the contract? If he had his mistress's leave, it was not; if he had it not, it was. And we are all of opinion, that it was only an absence with leave. For it appears, that both parties considered the contract between them as subsisting, and not dissolved. He paid her the whole that he had earned in the five weeks that he was absent, considering himself as her servant during that time. For otherwise the deduction would not have been a deduction of the particular sum earned by him; but a deduction in proportion of his whole year's wages to the time of his absence. And he looked upon himself as liable to be called back within the five weeks. And it is stated, that the original contract was not dissolved, save as aforesaid. Therefore we are all of opinion, that the contract was not dissolved, and consequently that the pauper gained a settlement with his mistress *Bliss* at *Parthingstone*. *Burrow, Mansfield. 788. Burrow's Settle. Cas. 479.*

E. 33 G. 2. *Christ-church and St. Matthew's Bethnall Green*. *Elizabeth Maxey* was, on the 24th day of *August* 1757, hired into *Christ-church* for a year, and continued in the said service till the 7th of *August* then next following; when she was frightened into fits, and thereby rendered incapable of doing any service. Her master being taken ill, and disturbed by her fits, desired Mr. *Lemonier*, who lived in the parish of *St. Matthew Bethnall Green*, to take her into his house, that she might be under the care of her sister who lived there; but if Mr. *Lemonier* refused to receive her, she was then to return to her master's house. Mr. *Lemonier* took her in; and she resided there about five days; and then was taken into the hospital.

hospital. The day after she had been received into Mr. Lemonier's house, she returned to her said master's house to fetch away her clothes; and her mistress gave her two shillings, which, with what she had before received, made up the full year's wages. No words of discharge passed between her and her mistress; but she looked upon herself as then discharged from her service; but believed, that had she recovered her health, her master would have received her again into his service. She continued under the same indisposition, till after the year from the said time of hiring was expired; and never returned again into her said master's service. And on the 17th of August 1751, her master hired another servant in her place. It was objected, that this service could not gain a settlement, being seventeen days short of the year. The cases that have been were, where the absence was in the middle of the year, and the absence purged by the master's receiving the servant again. But here the absence was 17 days at the end of the year; and if this be allowed, where can the court stop? It may as well be a want of three weeks, or a month, or two months. By lord Mansfield Ch. J. This case is an additional proof, among many others, upon how inconvenient a foot the law of settlements stands. This must appear a very clear case to any person of common plain sense and understanding. It is certainly a fair *bona fide* service for a year, without any fraud on either side. If a master gives his servant leave to go upon any other service, or to be absent for a short time, and pays him his whole wages, this is a good service. If the servant is taken ill, by the visitation of God, it is a condition incident to humanity, and is implied in all contracts. Therefore the master is bound to provide for and take care of the servant so taken ill in his service; and cannot deduct wages in proportion to the continuance of the servant's sickness. And there is no difference, whether the accident of sickness happens in the middle or at the end of the year. It is equally the act of God, and without any fault of the servant. And in the present case, the servant's being at Mr. Lemonier's, or in the hospital, is just the same thing as her being kept in the master's house, under his own roof. *Burrow, Mansfield.*

945. *Bur. Set. Cas.* 494.

T. 6 G. 3. *Frome-Selwood* and *Brixton Deverel*. *Richard Stent*, the husband of the pauper, was hired for a year at *King's Weston*, and served that year till within ten days of the end of year, when *Stent* declaring to his master,

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that he wished not to be settled in *King's Weston*, asked his leave to go and visit his relations. To which the master consented. After the year was expired, *Stent* returned to his master, and then hired himself as a day labourer, and as such continued with him about three months. On making up their accounts, *Stent* allowed out of his daily wages, for the days he had been absent the preceding year. The court held the settlement to be in *King's Weston*, looking upon the leave and consent of the master as fraudulent, and a mere evasion of the settlement. *Burrow's Settl. Cas.* 565.

Service continued beyond the year.

(5) *M. 19 G. 2. Crocombe and St. Cuthbert's.* Two justices made an order to remove *Joseph Garnsey* from *Crocombe* to *St. Cuthbert's*. Upon appeal, the sessions quashed that order, and state specially, that *Joseph Garnsey* the pauper hired himself for a year to *Dr. Lucy*, and lived a year with him in *St. Andrew's*, and had his wages and livery; and without coming to any new agreement, continued with him a quarter of a year longer. Then the master removed, with his family (*Joseph Garnsey* being one), to *St. Cuthbert's*, where the said *Joseph Garnsey* continued to live with him about six months, still under the first contract. It was moved to quash the order of sessions, for that they were mistaken in point of law; the service in *St. Cuthbert's* being a continuance of the first contract, and under it, for the said six months: The servant's last legal settlement must therefore be in *St. Cuthbert's*, where he served the last six months. On the other side it was urged, that this was not the same service as first year's was; for that the first contract was completed and executed on both sides, and was determined. It had gained the servant a settlement in *St. Andrew's*. And there was no new contract or agreement at all. Nor is any thing stated that can destroy the settlement gained in *St. Andrew's* by serving a whole year there. Unto which it was replied, That it is the constant practice for servants to go on upon the first agreement, without any new one. And if this were not the case, then a servant who had lived with his master 20 years in different parishes, without any new contract, must be settled in the parish where his master had lived in the first year of his service. And by the whole court: As there was a hiring for a year, and a service for a year, and a continuance under the same service, it is sufficient to gain a settlement; and such settlement must be in the parish where it was performed

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performed the last 40 days. *Str. 1240. Burrow's Settlement. Caf. 256.*

(6) By the 13 G. 2. c. 29. servants in the *Foundling* ^{Places exempted.} *hospital* shall not by such service gain any settlement in the parish where the said hospital is situate.

And by the 9 G. 3. c. 31. servants in the *Magdalen hospital* (established for the reception of penitent prostitutes) shall not by such service gain any settlement in the parish where the said hospital is situate.

vii. Of settlement by marriage.

1. Heretofore it hath been somewhat doubtful, what shall be deemed a sufficient marriage, so as that a woman shall gain a settlement thereby; and the courts have been favourable in admitting marriages, although not strictly solemnized according to the laws of the church; but now by the statute of the 26 G. 2. c. 33. a great distinction is made, between marriages solemnized before the 25th day of *March 1754*, and after that time: for by the said statute it is enacted, that after *March 25, 1754*, all marriages, (except in *Scotland*, and except the marriages of jews and quakers, where both the parties are jews or quakers respectively) which shall be solemnized without licence or publication of banns, or in any other place than a church or publick chapel (unless by special licence from the archbishop of *Canterbury*), or without the consent of parents or guardians (where either of the parties, not being a widower or widow, is under the age of 21), shall be null and void to all intents and purposes whatsoever. As in the case of *Chilham and Preston, M. 33 G. 2.* Two justices removed *Edward Young, Rebecca* his wife, and *Mary* their child, from *Chilham* to *Preston* near *Faversham*, both in *Kent*. And the sessions confirmed, in all points, the order of the two justices. The case, as stated to appear to the sessions was, that the said *Edward Young*, being legally settled in *Preston*, and (not being then a widower) was on the 25th of *January 1758*, without the consent of his father who was then living, married by licence in the parish church of *Tenham*, to *Rebecca Drury* (who was settled in the said parish of *Tenham*, and who is removed to *Preston* by the said order, as the wife of the said pauper); the said *Edward Young* being then an infant of 20 years: And that afterwards, the said *Rebecca* was brought to bed, in the parish of *Chilham*, of the said *Mary*,

Mary, removed by the order. It was argued in support of these orders, that the word *void* in the act may be construed *voidable*; and that it is highly unreasonable, that a virtuous young woman and her innocent children should be turned adrift, and be considered as a whore and bastards, without having any opportunity to contest so severe a judgment against them: Therefore that this marriage ought to be avoided by a sentence in the ecclesiastical court; and not in a collateral method, by an *ex parte* order of justices, made without hearing them or any person on that behalf. By lord *Mansfield* chief justice: This point will admit of no manner of doubt. And he took the distinction between acts of parliament made against one of the parties, and for the benefit of another of the parties (and where such other party has an election either to take the benefit of it or not); and acts of parliament made against both. This is not like the statute of bigamy, 1 *J. c.* 11. which was made only against one of the parties; but it is an act made against both: And the marriage is thereby expressly declared absolutely null and void to all intents and purposes whatsoever. And by the whole court, let the orders be confirmed as to the man, but quashed as to the woman and child. *Burrow, Mansfield. 897. Burrow's Settl. Caf. 486.*

What shall be deemed sufficient evidence of a marriage, as to a settlement.

2. *T. 2 G. 3. Stockland and Chardland. John Moes and Elizabeth Mason*, father and mother of the pauper, being both resident in the parish of *Chardland*, about the year 1723, went from thence together, declaring they were going to be married; and soon returned, declaring they had been married: and from thenceforward cohabited as man and wife for about 30 years, until the death of the said *Elizabeth*. The pauper was born at *Chardland* in 1725, and there baptized, and his baptism registred as the son of *John and Elizabeth Moes*. The said *John and Elizabeth*, some years before the death of the said *Elizabeth*, removed from the said parish of *Chardland* to the parish of *Stockland*, and there acquired a settlement by renting a tenement of 50 l. a year. They carried with them, from *Chardland* to *Stockland*, the said pauper their son, whose settlement depended upon this question Whether the said *John and Elizabeth*, the father and mother of the pauper, were to be considered as husband and wife at the time of his birth. It was contended at the sessions, that the said *John and Elizabeth* were never married; or if they were, that the said *Elizabeth* had a former husband

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husband then living. Concerning which, several witnesses having been examined on both sides, the said *John Moes* the father was produced, in order to prove that he and the said *Elizabeth* were never married, and that the supposed other husband was then living. But the court refused to receive his testimony. And on consideration of the evidence before the court, they were of opinion that the marriage of *John* and *Elizabeth* was sufficiently proved, and that the pauper gained a settlement at *Stockland* as part of their family, and discharged the order of the two justices for removing him to *Chardland*. It was moved to quash the order of sessions. The objection was, that they ought to have admitted the father to give evidence of his never having been lawfully married. But lord *Mansfield* seemed to think, that 30 years cohabitation as man and wife was sufficient proof to the justices to found an order of removal upon. However, a rule was made to shew cause. But on the last day of the term the objection was given up; and, by consent, the order of sessions was affirmed, and the recognizance discharged. *Burrow's Settl. Cas.* 508.

E. 2 G. 3. St. Devereux and Much Dewchurch. The question before the sessions was, Whether the marriage of *John* and *Susannah Meredith* was sufficiently proved. One witness made oath, that he and another witness were present on the 7th day of *February* 1758, when a marriage was solemnized in the parish church of *St. Devereux* between the said *John* and *Susannah Meredith*, by the minister of the said parish by banns. And it appearing to the said sessions, that the entry of the said marriage in the register book of the said parish was made in manner following, viz. "1758. *John Meredith* and *Susannah Jenkins* were married by banns;" but neither the minister, parties, nor witnesses signed the said entry, and that no other entry of the said marriage was ever made, they therefore were of opinion, that the marriage was not legally proved. On shewing cause, it was urged in support of their opinion, that this appeared, upon the state of the case to be a void marriage. For although the omission of banns, was originally only an offence against the ecclesiastical law; and even after the 7 & 8 *W. c.* 35. s. 2. the minister and clerk and man married without licence or banns were only liable to a penalty; yet since the act of the 26 *G. 2. c.* 33. an entry of this, properly signed, is become so essential a circumstance, that without it the marriage itself is null and void. But the court were

were of a different opinion. And lord *Mansfield* said, It was not incumbent on the persons married, to prove that the banns were published, nor doth the entry directed to be made affect the validity of the marriage. But at the same time he declared, that it was a matter of great publick concern, for the preservation of pedigrees (which were now become very difficult to prove): And the entry ought to have been made according to the directions of the act. He went so far as to declare, that an information ought to be granted by the court against the minister for omitting it, if it should appear clearly that it was owing to his neglect; and that such information should be prosecuted by the attorney general, at the king's expense; which he did not doubt would be readily directed, upon the recommendation of the court. And he ordered the fact to be further inquired into. And it came out, that a regular entry had been made; and that which was produced to the justices, was only a minute or memorandum. So the minister was justified. *Burrow's Settl. Caf.* 506.

Wife shall follow the husband's settlement.

3. It seemeth to be a good general rule, that a woman marrying a husband who hath a known settlement, shall follow the husband's settlement. And although in the case of *Uppoterce* and *Dunswell*, *M. 1 G.* it was held, that the wife shall not gain a settlement with the husband, until she hath lived with him 40 days unremoveable as part of his family; yet afterwards, in the case of *K. and Pinceborton*, *M. 3 G.* it was agreed by the court, that a wife is to be sent to her husband's settlement, though she never lived with him there. And in the case of *St. Giles's* and *Everfley Blackwater*, *H. 10 G.* the widow was removed to the deceased husband's settlement, though she had never been there; and it was ruled by all the court, that the removal was good, and that she must be sent to the last legal settlement of her husband, having acquired no other settlement since his death. *Caf. of S. 89. Sess. C. V. 1. 10, 105. V. 2. 112.*

Wife can gain no settlement without her husband.

4. It seemeth also to be agreed, that a wife can gain no settlement separate and distinct from her husband, during the coverture. As in the case of *Aythrop Roding* and *White Roding*, *M. 30 G. 2.* (hereafter following); where the wife, after the husband was run away, went to live upon a copyhold of her husband's, where her husband had never resided: it was held, that although she might not be removed from thence, yet (her husband being living) she could not thereby gain a settlement.

5. It seemeth also to be agreed, that a woman marrying a husband that hath no known settlement, doth not lose her former settlement which she had before marriage. But the great point of difference hath been, whether such settlement continues to her during the coverture, or it is suspended during her coverture, and only revives after the husband's death. Which point includes in it this question, Whether the parish where the woman was last legally settled before marriage, shall, by barely proving such marriage, avoid the settlement with them during the husband's life? or whether in order to avoid such settlement, it is not also necessary for them to prove, that such woman hath gained another settlement, that is to say, that the husband hath a settlement, and where?

Case where the husband hath no settlement.

In relation to which case, where the husband hath no known settlement, it hath been adjudged as follows:

E. 2 G. St. Giles's and St. Margaret's. A woman marries a foreigner; and her husband dies. By the court; She must be sent to the place of her settlement before marriage. *Sess. C. V. 1. 97.*

H. 12 G. Westham and Chiddingstone. It was stated, that a single woman, settled at *Chiddingstone*, was married to a man who is since dead, but his settlement did not appear. And by the court, Her settlement before marriage stands. *Str. 683.*

M. 1 G. Uppotterce and Dunswell. A woman is settled in *Dunswell*; and afterwards marries a vagrant, whose settlement doth not appear. But he goes and lives in *Uppotterce*, and dies there. Two justices remove the widow to *Dunswell*, where she was settled before marriage. And by the court: Where it appears that the husband in his lifetime had no legal settlement as can be found, there the marriage shall not put her in a worse condition than she was before, and is all one as the case of a *Scotchman* and a foreigner, and she shall not lose her former settlement. *Cas. of S. 89. Sess. C. V. 1. 80.*

Hitherto the cases seem to be agreed, being that the husband is dead. But the difficulty is, where the husband is supposed to be living. And in relation to this point, the following strong cases have been adjudged.

M. 12 An. Dunsford and Wilborough Green. A woman who was settled at *Wilborough*, marries *Archibald Player*, a *Scotchman*, who had gained no settlement in *England*. Two justices removed her from *Dunsford* to *Wilborough*, the place of her settlement before marriage. Exception; this is a married woman, and by her marriage she ought

to be settled where her husband was, and this cannot be right; for if the justices may send away a wife, it is making a divorce between husband and wife; and if he is a *Scotchman*, they ought to send her, as part of his family, to the bordering counties of *Scotland*, according to the act of the 39 *El. c. 4. f. 6.* The court held, though she was a married woman, yet if her husband had no settlement, she could not gain any other settlement than she had before marriage; and as for divorce it was none; for the husband might come to her as well at *Wilborough Green* as at *Dunsford*. *Foley* 249. *Caf. of S.* 31.

Note; the act of the 39 *El.* only says, that the *Scotchman* himself, if a vagrant, may be so sent; but says nothing of his family.

M. 3 G. St. Giles's and St. Margaret's. *Sarah Etherington* was settled at *St. Giles's*; and marries an *Irishman*. By the court: The marriage will not put her in a worse condition than she was before; and they held that she continued her settlement, notwithstanding her marriage. *Caf. of S.* 98.

H. 12 G. Westerham and Chidderton. The order specially stated by the sessions was this: It appeared to the court, by the testimony of *Elizabeth Pinchen*, that the said *Elizabeth Pinchen* was, at the time the said order was made, a married woman, and that her husband was one *Thomas Pinchen*, who was born in *Wiltshire*, but in what place or parish he had a settlement, he never informed her, nor doth she know; but that he is run away, and still living, for what she knows. By the court; She ought to be settled where her settlement was before marriage. *Foley* 252. *Seff. C. V. 2.* 110.

On the contrary, *H. 12 G. 2. Stretford and Norton*, the case was thus: An *English* woman married an *Irish* man who had no settlement in *England*. He ran away; two justices remove the wife to the place of her settlement before marriage. And it was urged, that there could be no pretence that this separated her from her husband; and if she cannot be sent thither, she can be sent no where. But by *Lee Ch. J.* It is now a settled point, that by the marriage the woman's settlement is suspended, whether the husband has or has not a settlement; for otherwise the justices might separate husband and wife; and therefore to make the order good, it should have appeared that the man was dead.—And the order was quashed by the whole court. And there were cited these two following cases, *viz. T. 1 G. Hanway and Marston*. It was there declared

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declared by the Ch. J. that the settlement of a woman, who married a vagrant, is suspended during the coverture; and that as the husband cannot be sent to the place of the wife's settlement, so neither can the wife herself, because a husband and a wife, being as it were but one person, cannot be parted. *T. 9 G. Shadwell and St. John's Wapping.* One *Ridley*, a vagrant, having no settlement, married a woman who had a settlement in *St. John's Wapping*, and had four children by her born in *Stepney*. And it was held, that the children were not settled in the place where they were born, but where the wife had a settlement; but that this was suspended during the coverture, and it revived again upon the death of the husband. *Andr. 307. Sess. C. V. 2. 185. Viner. Settle. E. 8. Burrow's Settl. Cas. 122. †*

Finally, in the case of *St. John's Wapping* and *St. Botolph's Bishopsgate*, *H. 28 G. 2.* it was adjudged as follows: *Margaret Kinley* having gained a settlement in *St. Botolph's* parish by hiring and service, afterwards married *Thomas Kinley* an *Irishman*, who had no settlement in *England*. About two years ago, the husband entered on board a man of war bound for the *West Indies*, but *Margaret* about two months ago heard he was living; and the question was, Whether her settlement which she had before marriage ceased, or was in suspense, during the coverture,

† Mr. *Burrow* says, he doth not find the case of *Shadwell* and *St. John's Wapping* in any printed book or manuscript; But it seems (he says) to be the same case which he had heard reported in the form of a catch, to the following effect:

A woman having a settlement
 Married a man with none:
 The question was, he being dead,
 If that she had, was gone.
 Quoth Sir *John Pratt**—Her settlement
 Suspended did remain,
 Living the husband: But, him dead,
 It doth revive again.

Chorus of Puisse Judges—
 Living the husband: But, him dead,
 It doth revive again.

* Then lord chief justice,

verture, and she should be looked upon as a casual poor; or she should be sent to the place of her settlement before marriage. After full consideration, *Ryder Ch. J.* delivered the opinion of the court: 1. It is certain *St. Botolph's* was once her settlement, and that is not disputed, 2. That settlement continues till she gains a new one, 3. That she has never yet gained a new one. To the second point he said, a settlement is a permanent thing; it lasts during life, or till a new one is acquired: and there is no case to be found, whether it has been determined or ceased sooner. Neither can any person discharge his own settlement sooner, or by any other means. The question is not, Whether she gained any new settlement by marriage, but whether her old settlement was discontinued by her marriage with a person that had none? It is absurd to say, she shall lose her own, without getting another. The objection that the husband and wife would be separated, is of no weight here; for they are separated already. I must own the case of *Stretford and Norton* is not to be distinguished from the present, and is against our present opinion. To be sure we must have great regard to former resolutions in this court; but we must judge upon the cases before us. How that case came to be determined so, I do not know, but there are at least four authorities the other way, (which perhaps might not then be cited), and we think the reason is with the old cases. The husband may come to her in one parish as well as the other, for he will be a vagrant in both, and liable to be treated as such. The wife's settlement is only suspended during her husband's continuance with her; and when he leaves her, it revives.

Whether the wife may be removed from the husband.

6. *H. 9 G. St. Michael's and Nunny.* Order of removal, reciting that the wife of a poor person who is now living, had intruded, and was likely to become chargeable, and that the place of her settlement was in the parish of *St. Michael*, she is therefore removed thither. It was moved to quash the order, because it did not appear, the husband was at the time of the removal in the parish of *St. Michael*, so that it may be they sent the wife away from the husband. But by the court: We cannot intend he was not; if he was in the parish from which she was sent, that indeed would vitiate the order; but as neither of these facts appear against the order, to satisfy us that it is bad, we are not to presume it to be so; and therefore it must be confirmed. *Str.* 544.

M. 14 G. 2. Ironacton and Painewicke. Upon complaint made by the churchwardens and overseers of *Painewick*, that *Mary* the wife of *William King* had intruded into *Painewick*, two justices removed her to *Ironacton*, which they adjudged to be the last legal settlement of the husband. Upon appeal, the sessions confirm that order. It was moved to quash these orders. The objection was, that the wife was removed without the husband, and that this amounts to a divorce between the man and his wife. But the court over-ruled the objection; for how doth it appear that the husband was not at *Ironacton* at that time? The court will not suppose it to be wrong, unless it appears so. The intrusion complained of was only by the wife, and they could not remove the husband, when he was not complained of. *Burrow's Settl. Cas. 153.*

H. 14 G. 2. K. and Higber Walton. Two justices make an order to remove *Mary Bennet*, wife of *Samuel Bennet*, to *Higber Walton*, which they adjudge to be the place of her last legal settlement. And the sessions confirm that order. It was moved to quash these orders; for that it doth not appear, whether it was this woman's settlement in her own right, or in the right of her husband. And nothing shall be intended. Now, if it was not her settlement in right of her husband, the justices had no power to send her thither. By the court: It is adjudged to be her last legal settlement. And she could not be settled but where her husband was. And we are not to intend any thing to vitiate the order. Therefore we cannot intend that the husband's settlement was not at *Higber Walton*. And the motion was denied. *Burrow's Settl. Cas. 162.*

7. Although it is generally true, that no settlement shall be good, which is brought about by fraud or practice; yet it seemeth that the rule faileth in this case, and that if the marriage take effect, the settlement is good: for the following cases do proceed upon such supposition.

M. 11 G. K. and Edwards. The overseers were indicted for a conspiracy, in giving a small sum of money to a poor man of another parish, for marrying a poor lame woman of their own parish, and so by this contrivance conspiring to settle the woman in the other parish, where the husband was settled: By the court; If there is a conspiracy, to let lands of 10 l. a year to a poor man in order to gain him a settlement, or to make a certificate of a parish officer, or to send a woman big of a bastard

Marriage fraudulently procured.

child into another parish to be delivered there, and so to charge the parish with the child, these are certainly crimes indictable. But this indictment was quashed, for want of averment, that the woman was last legally settled in the parish relieved by her marriage. 8 Mod. 321. *Seff. C. V. 1. 265.*

H. 6 G. 2. K. and Parkins. A single woman of Studley, big with child of a bastard, was sent back to Studley. Parkins, overseer of Studley, threatened with all the severity of the law, to force her to marry a stranger of another parish, against both his and her consent, he giving five guineas to the husband, and keeping him in liquor. By the court; Shew cause why information should not go. *Seff. C. V. 1. 176.*

M. 17 G. 2. K. and Watson. An information was granted against Watson and others, for procuring one Vine a soldier, who had a settlement in the parish of Brill, to marry a poor woman who was an idiot, and chargeable to the parish of Derton, by giving Vine 10l. and a fat hog for marrying her, whereby she became chargeable to the said parish of Brill. 1 Wilson. 41.

viii. Of settlement by continuing 40 days after notice.

By the 13 & 14 C. 2. c. 12. On complaint within 40 days after any person shall come to settle in any tenement under 10l. a year, two justices may remove him to the place where he was last legally settled for 40 days.

But by the 1 J. 2. c. 17. The 40 days continuance of such person in a parish, intended by the said act to make a settlement, shall be accounted from the time of his delivering notice in writing, of the house of his abode, and the number of his family, if he have any, to one of the churchwardens or overseers of the parish to which he shall remove. s. 3.

And by the 3 W. c. 11. The said 40 days continuance of such person in a parish or town, intended by the said acts to make a settlement, shall be accounted from the publication of a notice in writing, which he shall deliver, of the house of his abode, and the number of his family, if he have any, to a churchwarden or overseer. Which said notice in writing, the said churchwarden or overseer shall read, or cause to be read, publicly, immediately after divine service, in the church or chapel, on the next lord's day, when there shall be divine service in the same. And the said churchwarden or overseer shall register or cause to be registered, the said notice in writing, in the book kept for the poor's account. s. 3.

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And if any churchwarden or overseer shall refuse or neglect to read, or cause to be read such notice in writing as aforesaid, he shall (on proof thereof by the oath of two witnesses before one justice) forfeit for every offence 40s. to the party grieved, by distress, by warrant directed to the constable of the parish or town where the offender dwells; and for want of sufficient distress, the said justice shall commit him to the common gaol for one month. And if any churchwarden or overseer shall refuse or neglect to register, or cause to be registered, such notice in writing; he shall, on the like conviction, forfeit 40s. to the use of the poor of the parish or town where the offender dwells, to be levied as aforesaid; and for want of sufficient distress, then the said justice shall commit him as aforesaid, for the time aforesaid. *s. 5.*

After any person shall come to settle] But no soldier, seaman, shipwright, or other artificer, or workman in his majesty's service shall have any settlement in any parish, port-town, or other town, by delivering and publication of notice in writing, unless the same be after a dismissal out of the service. *s. 4.*

In any tenement under 10l. a year] But this hath been always understood of persons coming to settle upon such tenement, as farmers thereof, and not where the same is their own proper estate; and therefore a man's coming to settle upon his own estate is not within the act.

Where he was last legally settled for 40 days] *H. 10 G. Case of Cirencester.* It was held, that living 40 days successively was not necessary; and *Mr. J. Fortescue* said, that living 40 days off and on, is making the case stronger than living 40 days together in a parish. *Self. C. V. 2. 40. Str. 579.*

And, *H. 12 G. 2. Sowton and Sydbury.* It was admitted by the counsel, and held by the court as a point indisputable, that it is not necessary upon this statute, that the inhabitancy shall be for 40 days successively. *Andr. 345.*

Notice in writing] But persons executing a publick annual office, or paying parish rates, or being servants for a year, or apprentices by indenture, shall thereby be settled without notice in writing. *3 W. c. 11. s. 6, 7, 8.*

And in general, all persons not removeable may become settled equally without giving notice as with it, for the notice is only intended where the person is removeable; for if he is not removeable, the notice is to no purpose.

In writing] *H. 3 G. 2. Aldenham and Abbots Langley.* Upon a special order of sessions, it was stated, that a poor person forty years ago came into a parish and lived there ever since; that he attended the leet, amended the highways, had a pew in the church, five children, and did watch and ward. But by the court, Those are not annual offices in the parish, and the 1 *J. 2. c. 17.* was purposely made to avoid these constructive notices, and requires notice in writing; and therefore they held it no settlement. *Str. 853.*

H. 8 W. Dalbury and Foston. A person exercised the trade of a blacksmith, was publicly employed by the parishioners, by the bailiff of the lord of the manor, the vicar, and the justice. The question was, Whether this publick way of living was not tantamount to notice in writing, which was only designed to prevent clandestine entries and living. By the court; This might perhaps have satisfied the statute of the 1 *J. 2.* but the 3 *W.* hath particularized the notice, and what shall be tantamount to it, and what not; but this is not among the particulars of the statute, and therefore is not such notice as the law requires. For this being an explanatory law, the court cannot carry the explanation farther than the statute itself hath done, though in an original law the court will make construction according to equity. *Carth. 396. 2 Salk. 476. Foley 114.*

Publication of the notice] In the case of *K. and Chertsey.* The banns of matrimony of a poor person were published in the church; and it was insisted, that this was a notice sufficient, being in writing, and published in the church: But by the court; this is not sufficient; for the other requisites by the 3 *W.* must be observed; and that being an explanatory act, cannot be taken by equity. *5 Mod. 454.*

After all, this kind of settlement, by continuing 40 days after publication of notice in writing, is very seldom obtained; and the design of the acts is not so much for the gaining of settlements, as for the avoiding of them, by persons coming into a parish clandestinely: For the giving of notice is only putting a force upon the parish to remove. But if a person's situation is such, that it is doubtful whether he is actually removeable or not, he shall by giving of notice compel the parish either to allow him a settlement uncontested, by suffering him to continue 40 days; or, by removing him, to try the right.

ix. Of settlement by paying parish rates.

By the 13 & 14 G. 2. c. 12. *Forty days inhabitancy shall gain a settlement; By the 17. 2. c. 17. Such 40 days are to be reckoned from the delivering of notice in writing; And by the 3 W. c. 11. from the publication of such notice in the church.*

But if any person who shall come to inhabit in any town or parish, shall be charged with, and pay his share, towards the publick taxes or levies of the said town or parish, he shall be adjudged to have a legal settlement in the same, though no such notice in writing be delivered and published. 3 W. c. 11. s. 6.

But by the 9 & 10 W. c. 11. Persons residing under a certificate, shall gain no settlement by being rated to and paying any such levies, taxes, or assessments.

Shall be charged with and pay] M. 13 G. Scaln Tongall and Worpleston. The landlord was rated to the poor for the tenement, as being in his hands, and the tenant paid the rate. By the court; The tenant doth not gain a settlement, unless he be both rated and pay. Foley 128. Seff. C. V. 2. 122.

M. 9 G. 2. Sarratt and Bowington. The landlord, who never occupied the house, was charged to the poor rate; but the tenant, on demand of the overseers, paid it. By lord Hardwicke Ch. J. and the court: The charging is the principal act, as it infers notice to the parish; but both are necessary. The tenant must both be charged and pay, in order to gain a settlement. Bur. Sett. Caf. 73.

M. 10 G. 2. K. and Bramshaw. The landlord of the house, who was also overseer of the poor, was charged to the poor rate; but the tenant, on demand of the said landlord, paid the rate. By the court: It is a settled point, that a person must be rated as well as pay; otherwise he gains no settlement. Burrow's Sett. Caf. 98.

H. 10 G. 2. Lower Walton and Appleton. The father was rated, and the son who occupied the tenement paid the rate. By the court: This gained no settlement to the son. Burrow's Sett. Caf. 100.

E. 4 G. 2. Kingder and Kingswinford. A person rented a tenement, and paid all parochial taxes for the same in his own right, but was not rated in the parish books; but the name of Richard Cotes that rented the tenement before, was

kept in the levy books. By the court, This was no settlement. *Foley* 120.

But yet it hath been adjudged, that it is not necessary, that the party should be taxed by name : As in the case of *St. Mary le more* and *Heavy-tree*; the rate was charged, not on the person, but on the house, and it was determined by the court, that this rating and payment made a settlement. 2 *Salk.* 478.

So in the case of *K. and Brightmen*, *E. 8 G.* Where a man lived in a place called *Hofcoe's* tenement, and paid taxes there by the name of the occupier of *Hofcoe's*; this was adjudged to be a sufficient designation of the party, so as to gain a settlement. 8 *Mod.* 38. *Burrow, Mansfield.* 1062.

T. 31 G. 2. Painswick and Cirencester. The pauper, *Isaac Moorman*, took a house in *Cirencester*, of one *Thomas Clifford*, and agreed to pay the land tax, and poor taxes, and all other taxes. The rating was thus, "*Thomas Clifford, or tenant.*" *Moorman* paid the taxes; and the overseers gave receipts to him in his own name. The landlord *Thomas Clifford* lived five miles off. It was urged, that *Isaac Moorman* himself was not rated; being neither expressly named, nor even personally hinted at. But the court was clearly of opinion, that this man was sufficiently charged, to notify to the parish of *Cirencester* that he was an inhabitant there, and consequently gained a settlement by payment of the rates so charged. *Burrow, Mansfield.* 621. *Burrow's Settl. Cas.* 465.

E. 4 G. 3. Openshaw and Gorton. *James Bowden*, settled at *Openshaw*, took a house and two closes at *Gorton*, and the landlord was to pay all taxes and levies but the window tax. The rating was thus, "*Bowden's.*" The landlord himself for some time paid the taxes; but in the last year, the landlord having some disputes with the overseers about his assessments, directed the overseer to call upon his tenant *Bowden* for a poor rate and a church rate, and tell him that he his landlord ordered him to pay, and he would allow it to him out of his rent. The tenant paid the same, declaring he paid them for his landlord, and the overseer said he accepted them accordingly. But the landlord, not being asked by the tenant to allow it, did not allow it out of the rent till three quarters of a year after he left the estate (which was six days before the order of removal), when he repaid the money. It was objected, that in this case the tenant was neither rated nor paid. By lord *Mansfield Ch. J.* This was a tenant's tax. And he is assessed by name, *Bowden's.*

Bowden's. The agreement between his landlord and him, that the landlord should pay it, is nothing to the parish. *Burrow's Settl. Cas.* 522.

The publick taxes or levies] And though the rate be in form, or in the manner of making it, not strictly legal, but void; yet if the party be rated and pay to such a rate, he shall gain a settlement: For it would be hard, that one of the parish should come and say, that it was a void rate, being of their own making, and acquiesced under, and the money paid accordingly. *Vin. Settle. K. 9. St. Giles's Cripplegate and St. Mary Newington.*

The publick taxes or levies of the said town or parish] By the 9 G. c. 7. No person who shall be assessed to the scavenger's rate, or to the repairs of the highways, and shall duly pay the same, shall be deemed to be settled thereby. *s. 6.*

T. 9 An. Paying to the county bridge gains no settlement, for there all the county is liable, and he pays as one of the county, and not as an inhabitant of the parish or town where he lives. *Cases of S. 1.*

But perhaps the case may be altered in this respect, since the act of the 12 G. 2. c. 29 which charges a sum certain upon every division in proportion to their poor rate, towards the repair of bridges and other county expences, brought together by the said act into one general county rate; which before were collected separately, and (with respect to bridges) charged by the justices upon every individual. Whereas now, if a man pays to the county rate, he eases the division where he is assessed, and pays off so much as his assessment comes to. And there is in this case the same notoriety of his inhabitancy as in the case of the poor rate.

It hath been doubted, whether being assessed to and paying the land tax would gain a settlement. In the case of *Q. and St. Michael's Cornhill, T. 9 An.* It was adjudged, that this was no settlement, because it is a county tax; so of a hundred, or any other county tax. *Viner. Settle. K. 6.*

But in the case of *Oakehampton and Kenton, E. 7 G. 2.* A tide-waiter resided in *Kenton*, and had a salary. He was rated for this salary to the land tax in *Kenton*. It was paid for some time by himself, but repaid to him by the collector of the customs; and afterwards was paid by the collector. It was objected, that a taxation, without payment, gains no settlement: Then the question is,

Whether he paid his share towards the public taxes and levies of the parish. And it is plain that he has not. For it was not his own money, but the money of the collector. By lord *Hardwicke* Ch. J. Suppose a landlord has agreed to reimburse his tenant, would not the tenant be settled? This collector did not pay it to exonerate the parish, but to better the man's salary. And by the court; It hath been settled, that the land tax is a parish tax within the act; and his being taxed for his salary makes no difference. *Burrow's Settl. Caf. 5.*

And in the case of *Bramley and Armley*, H. 9 G. 2. *John Close*, the pauper, after his settlement in *Bramley*, removed with his family, and inhabited and farmed lands at *Armley*, for which he was charged and paid two quarterly payments to the land tax only. It was urged, that as the land tax is always allowed or repaid by the landlord, the payment thereof can gain no settlement to the tenant. By the court; It hath been a great doubt, whether in this respect the legislature did not mean parochial taxes. But this hath been long gotten over; and the land tax has been holden to be within the act, from the notice of inhabitancy that arises by the party's being assessed and paying it. *Burrow's Settl. Caf. 75.*

So also in the case of *K. and Chidingfold*, H. 30 G. 2. It was moved to quash an order of sessions, not stating the case, but merely the question, Whether the tenant's paying the land tax (which was allowed to him again by his landlord) amounts to such a notice, as shall gain the tenant a settlement: Which the sessions held that it did not. In support of the motion, was cited the case of *Oakehampton and Kenton*, where a tidewater's being taxed to the land tax for his salary, was holden to be sufficient notice so as thereby to gain a settlement, even tho' it was paid by the collector. And the aforesaid case was cited of *Armley and Bramley*. On shewing cause, the counsel on the other side acknowledged, that they could not support the order; the point being already fully settled by former determinations. And the rule for quashing the order of sessions was made absolute. *Burrow, Mansfield. 247. Burrow's Settl. Caf. 415.*

And, finally, in the case of *Fulham and St. Margaret's Westminster*, M. 33 G. 2. The tenant was assessed to and paid the land tax; which was allowed to him by his landlord, on settling his account with him for the rent. It was insisted, that it hath been often and fully settled, that this will gain a settlement. And upon that ground

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of its being a settled point, the court adjudged accordingly. *Burrow, Mansfield. 902. Burrow's Settlem. Cas. 488.*

The difficulty seems to have been, for that the land tax is not an occupier's tax. It is chargeable upon the land. The tenant is to pay it, 'tis true; but, by the annual land tax acts, he is to deduct the same out of his rent to the landlord. So that properly the tenant doth not pay his share, but his *landlord's* share to the land tax. The case of a tidewaiter, or exciseman, is somewhat different. For the officer's tax easeth the rest of the inhabitants for so much in their assessment; and it is reasonable that he who contributes to the parish stock should be intitled to receive relief from thence. But it is no advantage to the parish, that the tenant pays the tax, and not the landlord. But the aforefaid determinations have turned upon the point of notoriety, that the tenant's being assessed and paying shall be tantamount to notice in writing.

By the 21 G. 2. c. 10. Persons assessed to and paying the duties on houses and windows, shall not thereby gain a settlement.—And one reason may be, because they do not thereby contribute any thing to the publick stock of the parish.

x. Of settlement by serving a parish office.

By the 13 & 14 C. 2. c. 12. Forty days inhabitancy shall gain a settlement: By the 17. 2. c. 17. Such 40 days are to be reckoned from the delivering of notice in writing: And by the 3 W. c. 11. they are to be reckoned from the publication of such notice in the church.

But if any person who shall come to inhabit in any town or parish, shall for himself, and on his own account, execute any publick annual office or charge in the said town or parish, during one whole year; he shall be adjudged to have a legal settlement in the same, though no such notice in writing be delivered and published. 3 W. c. 11. s. 6.

By the 9 & 10 W. c. 11. No person who shall come into any parish by certificate, shall be adjudged by any act whatsoever, to have procured a legal settlement in such parish, unless he shall really and bona fide take a lease of a tenement of the yearly value of 10*l.* or shall execute some annual office in such parish, being legally placed in such office.

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For himself and on his own account] Therefore a person sworn into and serving the office of constable, as deputy to another, doth not thereby gain a settlement. *Viner. Settlm. G. 2. Lathsome and Sheriff Hales.*

H. 4 G. 3. Winterbourn and St. Philip and Jacob. The custom was for the constable to be presented by the jury at the leet. The jury presented *Richard Bayly*, esquire, who procured the pauper to serve for him, in order to gain the pauper a settlement. The pauper accordingly was sworn into the office by a justice, and served the same for a year; but was not presented thereto at the court leet, as constable in his own right. By the court clearly, He gained no settlement. *Burrow's Settlement Cas. 520.*

Annual office] *H. 9 Ann. Gatton and Milwich.* A person being chosen *parish clerk* by the parson, served for several years, and received his fees and dues. By the court; It is a parish office, and has the care and custody of the ornaments of the church. 'Tis true, if he is poor, and has a family, they may remove him; for although he came in by the parson only, yet their not removing him implies their consent and approbation; and by this consent of theirs, the law adjudges him in by the concurrence of the parish. *Cases of S. 241. 2 Salk. 536. Foley 123.*

And in the case of *K. and St. Mary Berkhamsstead, E. 8 G. 2.* The court seemed to be of opinion, that the executing the office of a *parish clerk* is sufficient for a certificate person to gain a settlement; for it is an *annual office* and more. *Self. C. V. 2. 182.*

H. 7 G. Bisham and Cook. The sessions setting out the fact specially, adjudge the settlement of a poor person to be at *Bisham*, because when he lived in that parish, he executed the office of *collector of the duties* given by the 6 & 7 *W. c. 6. on births and burials.* It was moved to quash it, because this was not a parish office, and it would be giving the commissioners (who are to appoint the collectors) a power to bring what charge they would upon the parish: Besides, it was not stated in the order, that this was an annual office, as it must be to give a settlement, within the express words of the act. By the court; The reason why the executing offices gives a settlement without notice is, because of the notoriety of the thing, of which the parliament thought it impossible but the parish should have notice: Can any thing be more noto-

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rious than this, which is to collect a duty from house to house? We cannot suppose a fraud in the commissioners, that they would appoint a person of no substance to be collector, only to bring a charge upon the parish. It needs not be a *parish office*, but a *publick annual office in the parish*. And as to its not being said, that this man executed it for a year, we must take it he did so, because it appears on looking into the statute, that the power given to the commissioners is to appoint a person who shall be collector of the duties for a year, and then give in his accounts. It hath been held a settlement in the case of the land tax, and why not in this? And the order was confirmed. *Str.* 411. *Foley* 124.

H. 9 Ann. St. Mary and St. Laurence in Reading. Mr. *Foley* says, the question was, Whether the being *churchwarden* for a borough, and serving that office for a year in the borough, which extends itself into several parishes, is such a service of an annual office as will gain a settlement? And, by the court, it was held to be an office, the serving of which for one whole year, was sufficient to gain him a settlement in that parish within the borough in which he lived. *Foley* 121.——But in this report there must probably have been some mistake. A churchwarden is a parochial officer, and his office doth not extend into several parishes. Mr. *Viner*, in a manuscript note which he had of this case, says, The office is mentioned there to be *warden* of the borough (which is most likely) being in nature of a *tything man*, to execute the process of the justices of the borough. But he is not to execute his office in one parish only, but all over the borough. And it was doubted whether this was a settlement or not; because he was not elected into this office by the parish, neither was the exercise of his office confined to the parish; yet he is a publick officer, and his office is partly exercised within the parish, so that the parishioners must take notice of him. And, by the court, it was held a good settlement, being within the express words of the statute of executing an office in a town or parish. *Vin. Settlement. G. 3.*

E. 8 G. 2. St. Maurice's and St. Mary Calendar's in Winchester. William West, a certificate man from *St. Thomas's*, came into the parish of *St. Mary Calendar* in *Winchester*. He was afterwards chosen one of the *constables* for the city of *Winchester*, which city consists of several other parishes besides that of *St. Mary Calendar*; and was legally placed in that office, and executed it in and through all

all parts of the city for one whole year; during which time he resided in the parish of *St. Mary Calendar*. By the court unanimously, he avoided his certificate, and consequently gained a settlement in *St. Mary Calendar's*, by executing this office in that parish; though chosen by the whole city, and not by the parish of *St. Mary* singly; and though not a mere parish office. For, in the words of the act, he executed an annual office in the parish, being legally placed in such office. *Burrow's Settlm. Cas.* 27.

H. 9 G. Burliscomb and Samford Peverell. The sessions on a special order adjudge, that the office of *tythingman* is not such an office as that a man thereby shall gain a settlement. But by the court, The order must be quashed; for this is an annual office in the parish, within the words and meaning of the act. *Str.* 444.

H. 2 G. 2. Holy Trinity and Garfington. A certificate man was appointed *tythingman* by the steward of a leet. He served a year; but was not sworn in till half the year was expired. The court inclined that it was a good settlement; but being a new case, and somewhat doubtful, they ordered a second argument to this point, Whether he was legally placed in the office or not, as not having been sworn till half the year was expired. But the order was afterwards quashed for want of complaint that the pauper was actually become chargeable. *Foley* 123. *Cas. of S. 72. Burrow's Settl. Cas.* 30.

M. 17 G. 2. Wingham and Sellindge. A certificate man was told by his wife, that the borsholder had left a wooden tally at his house, as a token that he had been chosen *borsholder* at a court leet of the manor; but he did not know it of his own knowledge, nor was there any evidence of a presentment by the leet jury, or of his appointment or election, nor did he ever take the oath of office; but once he executed a warrant of a justice directed to the borsholder, and for that whole year he was willing and ready to execute the office. By the court: When an order of sessions states the facts specially, the court must take it, that the justices have stated all the evidence that appeared to them. Now the act requires a legal placing in the office. But it is stated here negatively, that there was no presentment, no admission or swearing. So that here is no foundation for supporting a legal placing. *Str.* 1199. *Burrow's Settl. Cas.* 223.

H. 31 G. 2. Cold Ashton and Woodchester. There was a custom to serve the office of *tythingman*, for half a year only

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only at a time. By lord *Mansfield* Ch. J. This cannot be an annual office to gain a settlement.—In this case, the pauper had served the office of tythingman in *Cold Ashton* for half a year, and 20 years after for another half year. *Burrow, Mansfield. 502.*

M. 18 G. 2. Fittleworth and Pulborough. A certificate man was elected and sworn tythingman for a tything which did not extend through all the parish of *Fittleworth*, but comprehended that part of it where he resided. He executed the office a little more than five months, and then became actually chargeable, and asked relief. Whereupon two justices removed him, and their order upon appeal was affirmed. And by the court, The justices had jurisdiction to remove him, though in execution of the office, he being become actually chargeable. It is not necessary that the office should extend throughout all the parish; the act only requires executing some annual office in the parish. But it must be executed for the space of a whole year. And the present case being an execution for less than a whole year, it did not avoid his certificate, and consequently did not gain him a settlement at *Fittleworth*. *Burrow's Settl. Caf. 238.*

T. 27 & 28 G. 2. Whitchurch and Overton. It was stated, that the pauper was nominated at the court leet, and sworn into the office of *bailiff* or *ale-taster* for the borough; That he executed the office in the borough for a year: That the said office consists in inspecting weights and measures within the borough, and in warning the jury to serve at the court leet there: That the borough is not one fifth part of the parish: That the bailiffs have never executed any authority over the parish at large: That great part of the parish knew nothing of such office: And that new married men, and new comers, were frequently nominated for the sake of *colt-ale*. On the authority of the case of *Fittleworth*, this was held to be a good settlement. *Burrow's Settl. Caf. 365.*

E. 18 G. 2. Sheephead and Melborne. A person was certificated from *Sheephead* to *Melborne*, and staid there ten years, during which time the lady *Elizabeth Hastings* conveyed lands to trustees for several charities out of the profits, and amongst others, the sum of 10 l. a year to the charity school at *Melborne*, to be paid to the vicar there for the time being. In a special order of sessions it was stated, that the certificate man officiated as schoolmaster several years, and received the 10 l. a year from the vicar: and this the sessions held, gained him a settlement in

in *Melborne*, where they declare he had a freehold estate; and so had both the requisites to obtain a settlement to a certificate person, namely, a tenement of 10l. a year, and executing an annual office: But by the court, The order must be quashed: for it doth not appear how he came into this employment, and the legal right to receive the salary is in the vicar, who not caring to officiate himself, has therefore paid it over to this man as his deputy, which could never give any person a settlement, much less to a certificate man. *Str. 1225. Burrow's Settl. Cas. 244.*

Note, A *schoolmaster* is not legally placed in the office, till he hath subscribed before the bishop the declaration of conformity to the liturgy of the church of *England*, and is licensed by him: And by the 13 & 14 C. 2. c. 4. s. 10. if he shall execute the office without having so subscribed; he shall be utterly disabled, and *ipso facto* deprived thereof, and the same shall be void as if he were naturally dead.

But in the case of *Peake and Bourne*, *M. 6 G. 2.* it was adjudged, that the licence of the ordinary is not necessary for a *parish clerk*. *Str. 942.*

xi. Of settlement by renting 10l. a year.

By the 13 & 14 C. 2. c. 12. On complaint within 40 days after any person shall come to settle in any tenement under the yearly value of 10l. two justices may remove him to where he was last legally settled for 40 days.

By the 9 & 10 W. c. 11. No person who shall come into any parish by certificate, shall be adjudged by any act whatsoever to have gained a legal settlement in such parish, unless he shall really and bona fide take a lease of a tenement of the yearly value of 10l. or shall execute an annual office in such parish.

Within 40 days] Less than 40 days residence upon a tenement of 10l. a year will not gain a settlement. As in the case of *Dikwyn and Leominster*, *T. 8 & 9 G. 2.* *William Smith*, the pauper, agreed for a farm in the parish of *Eardisland*, to hold from *Candlemas*, at 44l. yearly rent; and in *April* following he sowed about 15 acres of the land with grain; and in *May* following, he came to live on the farm, and inhabited there about three weeks; and then the greatest part of his stock of cattle was seized and driven away, for rent due to his former landlord

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landlord at *Leominster*. Whereupon the said *Smith* then came to a new agreement with his landlord in *Eardisland*, and agreed to quit that farm, and to continue in the farm house and garden, and to have a small parcel of pasture with it, at the rent of 3l. 10s. and he continued thereupon in the said parish of *Eardisland* till *Michaelmas* following. By lord *Hardwicke* Ch. J. There was no inhabitan-
 tancy for 40 days in *Eardisland* under the lease of 44l. a year; and therefore there can be no settlement gained under it. And the next agreement with his landlord in *Eardisland* was quite a separate contract, and cannot be tacked to the former. It did not take effect till the other was finished. *Burrow's Settl. Cas.* 54.

After any person shall come to settle] Here it is to be considered, where several persons come to settle upon a tenement, either as taking jointly, or by under-leases one from another, whether this shall settle all or any of them.

M. 25 G. 2. Marden and Barham. Two persons jointly hired a house and land at *Marden* for 16l. a year, and jointly occupied the house and tilled the land for the said year, and jointly paid the rent, that is, each the like sum. It was urged that this gained no settlement to either of them. And a case was cited, between *Croft* and *Gainford* at *Durham* assizes 1733, which was a joint taking of 14l. a year, each paying separately, the landlord not caring to let to either singly. And the two judges (lord chief justice *Eyre* and *Reeves*) to whom it was referred, held it no settlement; because the statute requires the person's taking a tenement of 10l. a year value: Whereas this practice of calling in a partner in the taking, would, if admitted equivalent to a sole taking, evade and frustrate the statute, and let in an indefinite number of families all to be settled upon one tenement of 10l. a year value. On the contrary it was argued, that each was legally tenant of the whole, both being liable to the landlord for the whole rent. By the court: This was not sufficient to gain a settlement. Whatever remedy the landlord might have against the occupiers of the land for his rent, the act of parliament in the present case considers only the right; which clearly is but to one half, and that half doth not amount to the value of 10l. a year. *Burrow's Settl. Cas.* 311.

T. 29 & 30 G. 2. Little Tew and Duns Tew. *Richard Guffkins* the pauper, together with *John Goodwin* his father

ther in law, rented a tenement at *Duns Tew* at 8 l. a year, as partners; and lived there 12 years. And being about to leave *Duns Tew*, *Goodwin* alone went to Mr. *Keck*'s agent at *Little Tew*, and took a farm of 52 l. a year, for 4 years. After the said taking, and before the farm was entred upon, *Guffkyns* inquired of *Goodwin*, whether he depended upon his going with him to *Little Tew*: To which *Goodwin* replied, that he did; for he could not go without him. They both removed from *Duns Tew* to *Little Tew*, with their whole joint stock, to the value of more than 100 l.; and managed the farm together for 7 years, both of them residing thereon. Mr. *Keck* gave his receipts for the rent to *Goodwin* only; and once, when Mr. *Keck* distrained for rent, the distress was made upon the stock which Mr. *Keck* supposed to be *Goodwin*'s only; and *Goodwin* alone gave a bill of sale of the stock; and *Guffkyns* then stood by, without interposing. At the end of 7 years, just before the order of removal was made, *Guffkyns* went off from the farm, and *Goodwin* took the whole stock, allowing *Guffkyns* 62 l. for his moiety thereof. It was objected, that this being not a joint hiring, but a taking by *Goodwin* only, *Guffkyns* the pauper did not hereby gain a settlement. In the argument of this cause, it was observed by the court, that the words of the statute are, *coming to settle in any tenement under the yearly value of 10 l.* That the agreement between the two farmers was, to occupy jointly, with a joint stock: That the case doth not turn only upon the credit given to the tenant by the landlord, but upon the credit given by the legislature to a man able to stock a farm of such a value: A tenant may let the whole, or even subdivide it out to under-tenants, who may thereby gain a settlement, if the tenement be above 10 l. a year: And where is the difference, between the original tenant's letting out part, and his taking in a partner?—And after having taken time to consider of it, the resolution of the court was, that *Guffkyns* gained a settlement in *Little Tew*. For, being taken in partner by *Goodwin*, he is to be considered as having an interest in the farm, at least as tenant at will to *Goodwin* of the moiety of a farm worth 52 l. a year for the whole of it, and consequently his moiety above 10 l. a year. A tenancy at will, even in the case of a certificate person, is sufficient to gain a settlement, as was determined in the case of *Cranley and St. Mary's Guildford*, H. 8 G. *Burrow's Settl. Cas.* 398. M.

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M. 7 G. 3. Llanduerras and Northop. Evan Hughes, father of the pauper, rented a tenement of 10l. a year, and paid the rent to the landlord. He lived for above 40 days in a part of it, which part was of the yearly value of 40s. only. And immediately after his taking the tenement, he let the residue thereof to under-tenants, without residing thereupon at all himself. It was argued, that being liable only to the rent did not gain him a settlement. He must occupy as well as take a tenement of 10l. a year value, and he ought to occupy the whole 10l. a year. Otherwise, many different poor families might be introduced into a parish, upon one such taking. It would quite evade the act, if the mere taking of a tenement would do; for then one would gain a settlement by taking, and another by occupying the same tenement. But by the court: The act doth not require a person renting a tenement of 10l. a year, to occupy it; it is enough, if he rents it, and resides 40 days in the parish. The ground the act goes upon, is a person's having credit sufficient to hire a tenement of that value. This man appears to have had such credit. The under-tenants do not take a tenement of the yearly value of 10l. therefore they do not hereby gain a settlement. *Burrow's Settl. Cas. 571.*

But if a lease or interest in a tenement under 10l. a year devolves upon a person by executorship or other act of law; this is not within the statute, as taking a lease of a tenement: but such person continuing upon the tenement 40 days irremovable, thereby gains a settlement. As in the case of *Uttoxeter and Marchington Woodlands, T. 5 G. 3.* The pauper *William Gilbert*, was settled at *Uttoxeter*. His mother rented and resided upon a farm of 22l. a year at *Marchington Woodlands*; which she devised to her 5 children, and made the pauper and her 3 other sons executors of her will, and died. The pauper alone proved the will, and entered as her executor, and resided upon the farm 12 or 13 weeks. He afterwards returned to *Uttoxeter*; but continued to go over to *Marchington Woodlands*, to give directions from time to time, and had a servant upon the farm till the *Ladyday* following. The question was, Whether hereby he gained a settlement at *Marchington Woodlands*? It was objected, that a person ought to come to the tenement by a lease or some contract with the owner. But an executor is not answerable, personally and in his own property, to the landlord. He is under no contract with him. Nor is

here a sufficient residence. He stays no longer than his trust of executorship required. He never meant it for a residence. It is like the *Scarborough* case between *Elve-itham* and *Alton*; was only a casual residence. Besides the value is not sufficient: for he was only intitled to a joint interest in 22 l. a year, with 3 or 4 other persons. So that his share is nothing like 10 l. a year. And his proving the will makes no difference: for the other 3 executors are equally intitled, and may prove the will as well as himself. By the court: It is very true, that a share not amounting to 10 l. a year, of a tenement of above 10 l. a year in value, will not do. But here he has a right as executor. The value therefore is totally immaterial; because, by common law, no person can be removed from his own. And one who has a right to reside irremovably, doth thereby gain a settlement, if he resides 40 days. *Burrow's Settl. Cas.* 538.

Shall come to settle] For taking land in the parish, of whatever value it shall be, without coming to reside there, will not gain a settlement.

But if a man's family reside there, altho' he doth not reside there himself, it may in some instances be sufficient. As in the case of *St. Margaret's Westminster*, and *Ludgate, M. 5 G. 2.* Two justices remove *Elizabeth Coyners* from the parish of *St. Margaret's* to the parish of *Ludgate*. The sessions state the case specially, that *James Conyers*, father of the said *Elizabeth*, rented a house in *Ludgate* parish of 25 l. a year, and paid to the rates of church and poor; but that he was a prisoner in the *Fleet* at the time he did so; and that *Elizabeth* gained no settlement for herself. Upon which the sessions adjudged that he gained no settlement by this. But the court quashed the order of sessions, and confirmed the order of the two justices. *1 Barnardist.* 76. For in this case he was in custody of the law, and in no capacity of gaining a settlement elsewhere; tho' occasionally absent, yet he might be looked upon as virtually resident at *Ludgate*, which was the place where he came to settle.

In any tenement] Here it occurs to be considered, what shall be a tenement within this act, so as to gain a settlement. Concerning which it hath been adjudged as follows:

H. 10 An. Evelin and Rentcombe. An order was drawn up specially to have the opinion of the court, Whether renting of a watermill of 10 l. a year, would make a settlement?

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ment? And by the whole court clearly, a mill is a *tenement*, and the renting thereof must gain a settlement within the statute. 2 *Salk.* 536. That is, if the party lives therein, or within the parish.

T. 10 G. 2. Butley and Benhall. The question was, Whether renting a *windmill* at 14 l. a year, gained a settlement? it having been determined that a *watermill* did. It was said, those are always habitable, but the others often are not. But by the court, It is the same as if he had rented land of that value. *Seff. C. V. 1. 320. Burrow's Settl. Cas. 107.*

H. 12 G. 2. Stone and Kniver. Upon a special order of sessions, it was stated, that a poor person rented a *coney warren* and a cottage upon it at 10 l. a year, which the justices were of opinion did not gain him a settlement. But by the court, A *mill* hath been held to be a tenement within the statute, and why not this? It is his ability to pay 10 l. a year, that is the foundation of the settlement; and whether he pays it for a house of habitation, or for a warren which brings him in a profit, is not material; the order of sessions must be quashed. *Str. 678. Seff. C. V. 2. 109.*

But by the 7 G. 3. c. 40. A person renting *turnpike tolls*, and residing in the toll house, shall not thereby gain a settlement, *s. 46.*

E. 3 G. 2. Minchinghampton and Bisley. Order specially stated: A poor person rented, in the parish of *Bisley*, lands of the yearly value of 8 l. from his father, an house of the yearly rent of 1 l. 10 s. from his uncle, and the same year *took the pasture* of a piece of land in the said parish from *All Saints day* to *Candlemas*, and paid 12 s. for the same, which piece of land was worth 6 l. a year. It was urged, that this was a good settlement, because during those three months the man was not removeable. But in this case, the court held, that *taking the pasture of a piece of land* was not more than taking the herbage, or than taking the common, which could not be esteemed part of a *tenement* within the meaning of the statute; but seemed to think, that if the words had been, that he had *taken a pasture ground* for three months, that would have made a good settlement. But the case went off upon another point, namely, for want of an adjudication. *Seff. C. V. 2. 132. Str. 874. Burrow, Mansfield. 762. Burrow's Set. Cas. 316.*

H. 25 G. 2. Lockerley and Shirefield English. John *Mersb* occupied a messuage, farm, and lands in *Lockerley*.

He covenants with *Edwards* a dairy-man, to let him a dairy consisting of 16 cows, with the dwelling house, and feeding for the said cows on 21 acres of clover ground, and 13 acres of meadow land, with the after-lease of a mead; together with the run of the backside and the arshes, for the feeding of pigs; and also the run of one horse, with the cows aforesaid; from the 2d of *February*, for one year. *Mersh* was to allow to *Edwards* all the sherl wheat arising from the corn growing on the farm; and also to provide for the use of the cattle, when wanted, five tons of hay; and, for the feed of the same cattle, to cause ten acres of the clover ground and thirteen acres of the meadow to be laid up at *Candlemas* day, and the other 11 acres of the clover at *Ladyday*; and also to put the dwelling house and premises into repair; and fetch home the goods, necessaries, and fuel of *Edwards*. *Mersh* was to abate 2s. a week for every cow not delivered of her calf by the first of *May*, until she should be delivered; and also what may be reasonable, for every calf wanting to such cow. *Edwards* covenanted to pay *Mersh*, in consideration of the premises, 3l. 5s. for every such cow as aforesaid delivered to his use and possession, payable quarterly; except as above-mentioned. The question was, Whether this was a tenement within the act, so as by the renting thereof to gain a settlement? And by the court, It was not. A tenement must lie in tenure, and relate to land. Whereas this is a mere personal contract, an agreement for the use and feeding of cows. *Burrow's Settl. Cas.* 315.

As to the case, *Whether it shall be one intire tenement*; it hath been adjudged as follows:

M. 1 G. North-Nibley and Wotton under Edge. A person rented an alehouse at 5l. a year, at *Ladyday*, for a year; and in *May* following rented a piece of land for 6l. a year; held the same for two months; and ran away. It was held, that it was not necessary the messuage or tenement should be rented of one person; though it be rented of several, yet in him it is but one, and the statute is satisfied, he being of ability to be trusted with a tenement of 10l. a year. *Cases of S. 86. Sess. C. V. 1. 73. Fol. 79.*

Furthermore; It is to be considered, How far the same tenement, but lying in different parishes, shall gain a settlement: As to which it hath been adjudged as follows:

T. 3 G. South Sydenham and Lamerton. A person rented a tenement of 10l. a year, being one intire tenement,

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But the and the same tenements, of parishes, situation in this. And the reason tend as well as tenement, viz. tended to be who used to stock; and poor, namely a tenement is not the less is in a different who do not would be habitation, settlement, *S.*

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A person rented and lands of laid contiguous occupied by of the land, one parish, court, This city of South Str. 849.

Further yet distinct tenement in another parish within the act though in the said, the court tenements would been observed the case of *S.* solved as follows

but lying in two parishes. The question was, Whether this gained a settlement? By the court: If the tenement be intire, though the lands be in different parishes, it seems to be a settlement in that parish where the house is; otherwise, where the tenements are distinct, and lie in different parishes, as if a tenement of 8 l. lie in one parish, and a tenement of 3 l. in another. *Str.* 57. *Sess. C. V. 1.* 115. *Foley* 81.

But the question in this case only was, Whether one and the same tenement, and not whether two distinct tenements, of the yearly value of 10 l. but lying in different parishes, shall gain a settlement: So that the determination in this case, as to this latter point, was extrajudicial. And the reason given by the court in this case doth extend as well to different tenements, as to one intire tenement, *viz.* The mischief recited by the statute, and intended to be prevented, is the vagrancy of poor persons, who used to come into parishes where there was the best stock; and the statute describes who are intended by those poor, namely, such persons who are not capable of hiring a tenement of 10 l. a year; now the man's sufficiency is not the less, because 6 l. a year, part of the tenement, is in a different parish. There are considerable farmers who do not rent 10 l. a year in any one parish, and it would be hard to adjudge that therefore they gain no settlement, *Str.* 58. *Foley* 81.

M. 3 G. 2. Elsted and Hollibourne. The case was this: A person rented a tenement, consisting of a farm house and lands of 12 l. 10 s. a year; which house and lands laid contiguous, and had been usually letten together and occupied by the same person, but the house and so much of the land, as together amounted to 9 l. a year, lay in one parish, and 3 l. 10 s. in another parish. By the court, This was held to be a settlement; on the authority of *South Sydenham* and *Lamerton*. *Sess. C. V. 2.* 130. *Str.* 849.

Further yet; It remains to be considered, how far two distinct tenements, one being in one parish, and another being in another parish, shall be deemed a sufficient tenement within the act, whereby to gain a settlement: For although in the case of *South Sydenham* and *Lamerton* aforesaid, the court seemed to be of opinion that two such tenements would not gain a settlement; yet that (as hath been observed), was not the point in question. And in the case of *Sandwich* and *Studland*, *E. 8 G. 2.* it was resolved as follows: A person rented a house in *Studland*

at 30. s a year. After he had lived in it about 2 years, he took lands in *Langton* of 12 l. a year, on which there was no house; and occupied the said lands two years: All which time he inhabited in and rented also the said house in *Studland*. By the court: It hath been a question, Whether two distinct tenements taken at different times (where neither of them alone amounted to 10 l. a year in value) should make a settlement. But it is now settled that it does. And it is the same thing whether the taking was distinct or intire, or in one parish or two parishes. The settlement is in the parish where he lives. The ground of these resolutions is, the ability to rent a tenement of such a value: Which excludes the presumption of his being likely to become chargeable to the parish. *Burrow's Settl. Caf. 44.*

E. 8 G. 3. St. Laurence and St. Maurice both in Winchester. *Richard Gradidge*, husband of the pauper, rented a tenement of one *Henry Warne* in the parish of *Hursley* for a year from *Ladyday* at 3 l. 10 s. a year, but resided therein five or six weeks only, and then quit- ted it, and rendred the key to the said *Henry Warne*, which *Warne* refused to accept; whereupon *Gradidge* left it with a neighbour, before *Midsummer day* then next, for the said *Warne* to take it when he thought proper. On the said *Midsummer day*, *Gradidge* took a tenement in the parish of *St. Maurice*, at the rent of 9 l. a year; and on the same day entred into possession thereof, and resided thereon above 40 days, before the key in *Hursley* was received by the said *Warne*, who did not accept it till the 16th of *August* following. It was objected, that although it be settled, that if a person rents a tenement in two different parishes, amounting to 10 l. a year in the whole, he shall gain a settlement in that of the two parishes in which he resides; yet still, in order to gain a settlement, he ought to be the joint occupier of both tenements within the same period: Whereas here, the first contract was dissolved, from *Midsummer* at least, if not sooner. The landlord took back the key on the 16th of *August*, which relates back to the abandonment some time before *Midsummer*. But by the court: Here is a contract for a year in *Hursley* not dissolved; nor could it be dissolved: The landlord refused to accept the key: And he did not receive it at last till the middle of *August*, which was more than 40 days after hiring the second tenement. *Burrow's Settl. Caf. 588.*

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Under the yearly value of 10l.] If the tenement is under 10l. a year, the justices upon complaint within 40 days have power to remove the person coming there to reside; if it is not under 10l. a year, they have no power to remove him; and continuing upon the same unremoveable for 40 days, he thereby gains a settlement.

Upon which it is observable, that the payment of the rent can be no matter of consideration with regard to the settlement; for the settlement is obtained before the rent becomes due. For the settlement is not suspended, as in the case of a hired servant, until he hath ended his year; but so soon as he hath resided 40 days, he is settled without more; even as a servant hired for a year, became settled in 40 days, before the statute of 8 & 9 W. and as apprentices are still settled in 40 days, without any regard to serving out their time.

And it is observable, that the statute doth not say for what time he shall rent the tenement, but only of what value it shall be by the year. And in the case of *Gratwich* and *Shenston*, E. 32 G. 2. A person took an house of 30s. a year in the parish of *Gratwich*; and two acres and an half of land in the parish of *King's Bromley*, for the growing of potatoes, from *Candlemas* to *Michaelmas*, being eight months. for 11l. and lodged the last 40 days before *Michaelmas* in the parish of *King's Bromley*. It appeared that he took them *bona fide*, and without any design of fraudulently obtaining a settlement in the parish. And it was adjudged that he gained a settlement thereby in the said parish of *King's Bromley*. *Burrow*, Mansfield. 760. *Burrow's Settl. Cas.* 474.

H. 6. G. 3. *Staunton under Bardon* and *Ulescroft*. The pauper *William Harrison* took a tenement from the first of *June* till *Ladyday* following for 26 guineas, which he occupied accordingly, and paid the rent. The question was, Whether by continuing upon this tenement for 40 days unremoveable, he thereby gained a settlement. And by the court clearly, he did. *Burrow's Settl. Cas.* 558.

H. 7 G. 3. *St. Matthew's Bethnal Green* and *St. Botolph's Aldgate*. *John Fell*, the husband of the pauper, hired a house for five months, for which he agreed to pay the sum of 4l. He came and resided with his family there, during the said five months. And the house, at the time of hiring and entering upon the same, was worth, to be let, 10l. by the year. It was argued, that this could not gain a settlement. The criterion, which is,

the ability of the person to hire a tenement of 10 l. a year value, fails in this case. For it doth not appear that this man had such a degree of credit as the statute requires. Besides that the proportion of 4 l. for five months falls short of 10 l. a year by about 8 d. a month. But by lord *Mansfield* and the court: The rent is not material, but the value. And we are concluded from treating this tenement as under 10 l. a year, by the finding of the justices, who have stated it as a fact, that at the time when he took it, it was of the value of 10 l. a year to be let. And it was adjudged, that hereby he gained a settlement. *Burrow's Settl. Cas.* 574.

Of ten pounds] Upon these words, the value of the tenement is considerable; or what shall be deemed a tenement of 10 l. a year, sufficient to gain a settlement. Concerning which it hath been adjudged as follows:

H. 13 G. 2. Southwold and Yokesford. A person took an house at the yearly rent of 10 l. The landlord agreed to make new buildings; which improvements were never made. The house, without the improvements was worth only 6 l. 10 s. a year. By the court: The sessions must judge upon the facts; they have stated that the agreement was for 10 l. a year; this is evidence of the value: but the justices have a right to inquire into the real value; and they have expressly stated as a fact, that this house was only of the value of 6 l. 10 s. a year; and the mere covenant to build, which covenant was never performed, cannot alter the case. Therefore it was adjudged that this was no settlement. *Seff. C. V. 2. 198. Str. 57. Burrow's Settl. Cas.* 140.

T. 3 G. South Sydenham and Lamerton. Order specially stated: A person took a lease of a tenement for 99 years, determinable on three lives, and paid his fine, and the rent reserved was but 7 l. but the real value was 13 l. By the court; The quantity of the rent is not material, but the value of the tenement. If there be a lease of lands worth 10 l. a year, and a fine be paid, and 20 s. only reserved it makes a settlement; so if no fine be paid, or no rent reserved, yet if the tenement is worth 10 l. a year, it makes a settlement: for the settlement depends on the value of the tenement, and not on the rent. *Seff. C. V. 2. 198. Str. 57.*

T. 14 & 15 G. 2. Weston and Kirton. Case specially stated. A person took a farm at Kirton of 10 l. a year, which

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which had been let at that rent for five or six years then last past, but before that time was let at 7 l. a year only. When he first took and entred thereon, he was not of ability to stock the same. Before his entry, he was told by the former tenant, that his farm was too dear. To which he answered, that he did not regard the dearness; for as it was 10 l. a year, it would gain him a settlement, and put an end to a dispute there was between two towns about his settlement; but desired the said former tenant to take no notice thereof to any body. By the court: We are not to determine the matter upon the evidence given to the sessions, but upon facts stated and adjudications made by them. Here they have stated circumstances; but they have not explicitly stated the real value, nor have they adjudged any fraud. The act requires the renting a tenement of the yearly value of 10 l. They state, that he did take a tenement of 10 l. a year at *Kirton*. Indeed they add, that it had been let at 7 l. a year formerly. But it might be then worth more, or might have been afterwards improved; and it had for five or six years last been let at 10 l. a year. And the quantity or value of his stock doth not alter the value of the tenement. They also state a conversation between him and the former tenant, who told him it was too dear; to which he answered, that he did it to gain a settlement. Yet they do not adjudge that there was any fraud; nor do they state that it was under the value of 10 l. a year, and the evidence rather proves it to be of that value. They must expressly state that it is fraudulent, or else we cannot take it to be so. And we must take the case stated to be the whole case. Therefore it was adjudged, that hereby he gained a settlement at *Kirton*. Sess. C. V. 2. 141. Str. 1156. Burrow's Settl. Cas. 166.

E. 33 G. 2. *Kniveton* and *Tiffington*. The pauper *Isaac Wibberley*, being settled at *Tiffington*, took a farm at *Kniveton* of 8 l. a year; and also at the same place, jointly with one *Thomas Hill*, took another farm of 3 l. 15 s. a year; and at the taking of the said farm of 3 l. 15 s. it was agreed between the said *Isaac Wibberley* and *Thomas Hill*, that *Thomas Hill* should have and take one half of the corn and hay of the said 3 l. 15 s. farm; and that the said *Isaac Wibberley*, after that the said *Thomas Hill* had taken and carried away his half part of the said corn and hay, should have the whole farm of 3 l. 15 s. till *Ladyday* following, paying to the said *Thomas Hill* 4 s. for the said *Hill's* share of the said farm. The question was,

was, Whether this was a tenement of the yearly value of 10 l. The counsel for the parish of *Tiffington* argued, that *Wibberley* the pauper was liable (as being joint tenant with *Hill*) to answer for and pay the whole 3 l. 15 s. and moreover, that he was sole tenant of that farm, for and during the last half year: or, even taking it at the strictest, that he was really and properly to pay 10 l. 1 s. 6 d. a year; for he is to pay 8 l. and half of 3 l. 15 s. (which is 1 l. 17 s. 6 d.), and 4 s. more for the last half year, which is in all 10 l. 1 s. 6 d. But the court unanimously held, That this tenement, thus rented in *Kniveton*, was under the yearly value of 10 l. The act fixes the value at 10 l. And the value must be estimated by the rent, and always is taken to be according to the rent. And here the rent is 8 l. a year, and the half of 3 l. 15 s. which two rents taken together do not amount to 10 l. Indeed, he was to pay *Hill* 4 s. for the advantage he was to have, after the crop was off: But an agreement of this sort, between the two joint tenants cannot be considered as a rent. *Burrow*, Mansfield. 986. *Burrow's Settl. Cas.* 499.

Unless he (the certificate person) shall really and bona fide take a lease] *T. 9 G. K. and Little Dean*. It was stated, that a man took a lease for 7 years, and objected that it might be only by parol, and that it is void for the whole, and there can be no settlement. But by the court; Then it should have been stated to be by parol; we must take it to be by deed, otherwise it is no lease at all. And the order was confirmed. *Str.* 555.

H. 8 G. Cranly and St. Mary Guilford. Upon a special order of sessions it was stated, that a certificate man agreed with the lessee of a mill, that he should occupy the mill, and pay 12 l. a year; that there was no under lease or assignment, but in pursuance of that agreement the certificate man occupied the mill two years, and paid the rent. The sessions adjudged it no settlement. But by the court; The order must be quashed: for if this be not an absolute lease for a year (as *Eyre J.* said it was, the rent being reserved as rent for a year), yet it is undoubtedly a lease at will, which is sufficient to gain a settlement. *Str.* 502.

A lease of a tenement] *M. 9 G. St. John's Hertford and Amwell*. A certificate man took a farm of 10 l. a year, part of which was in *St. John's*, and part in *Amwell*; but the greatest part together with the house, being stated

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to lie in the parish that received his certificate, the court held it a settlement there. *Str.* 529. *Caf. of S.* 148.

H. 8 G. 2. *St. Mary Calendre and St. Thomas.* It was said, that these acts have been literally expounded, and that renting 10 l. a year in different parishes will avoid a certificate. *Seff. C. V.* 1. 315.

E. 4 G. 2. *Case of Stapleford in Leicestershire.* A person took 3 l. a year in the place he was certificated to, and 40 l. a year in the next parish, but lived where the 3 l. was; and it was held a settlement there. *Str.* 849.

E. 15 G. 2. *Bowling and Bradford.* A certificate person rented and resided upon a tenement of 9 l. a year in *Bowling*, and at the same time rented lands of 1 l. 15 s. a year in another parish. It was objected, that in order to avoid a certificate, it is necessary to rent 10 l. a year in the parish where the certificate person inhabits; for the act says, that no person coming into any parish by certificate, shall gain a settlement in such parish, unless he shall take a lease of a tenement of 10 l. a year or execute an annual office *in such parish*. By the court: Renting 10 l. a year is only required in general, and is not confined to the particular parish: The words *in such parish* relate only to executing an annual office. And it is within the same reason (namely, the substance and credit of the man) whether he rents that value in one parish, or in different parishes. *Burrow's Settl. Caf.* 177.

Upon the whole, notwithstanding what hath been so often mentioned above, as to the supposed *sufficiency* of the tenant to stock the tenement upon which he comes to reside, yet the statute takes no notice of that; and therefore, although it may be a good general reason to suppose that a person of such ability is not likely to become chargeable, yet such ability doth not seem to enter as any necessary ingredient into the settlement; and if the landlord will trust the tenant, it seemeth that the parish hath no remedy, unless the justices shall adjudge it a fraud. And in the case of *giving security* for the rent, it hath been determined as follows:

T. 10 G. 2. *Butley and Benhall.* A person rented a windmill at 14 l. a year; but gave security for the rent: It was objected, that this was no settlement, for that the foundation thereof is the credit of the party, which fails in this case. But by the court, Giving security for the rent doth not alter the case; for he that has credit to give

give security, has credit to pay rent. *Sess. C. V. 1. 320.*
Andr. 3. Burrow's Settl. Cas. 107.

And it may be observed upon this case, that it requires no great ability to stock a windmill.

xii. Of settlement by a person's own estate.

By the 13 & 14 C. 2. c. 12. On complaint within 40 days after any person shall come to settle in any tenement under 10l. a year, two justices may remove him.

And by the 9 & 10 W. c. 11. No certificate person shall gain a settlement, but by renting 10l. a year, or executing an annual office.

Upon which two statutes the following cases are considerable :

Person settled by his own estate.

1. *How far a person, having an estate of his own, though under 10l. a year, shall gain a settlement thereby, within the said statute of the 13 & 14 C. 2.*

E. 11 An. Harrow and Edgware. A person settled at Harrow, went into the parish of Edgware, and purchased a copyhold estate for life, and lived therein 4 or 5 years, and died. And as this was a tenement under 10l. a year, the question was, upon the 13 & 14 C. 2. whether this gained him a settlement at Edgware? It was argued, that the statute hath been always held to mean an estate which a man takes to farm, and not an estate of his own; for if a person has a freehold, he cannot be removed from it, though not worth 10l. a year. And by *Parker Ch. J.* and the court: Where a person has an estate for life, or an estate of inheritance of his own, that gains him a settlement, though less than 10l. a year; for he cannot be removed, and if he cannot be removed, he certainly gains a settlement. *Foley 257.*

E. 13 G. 2. Hasfield and Tirley. On a special order of sessions, relating to the settlement of a boy of 8 years and a girl of 6, it was stated, that the mother of these children had an estate of 4l. a year in Tirley, where she and her husband lived and had these children: that she dying, the husband became tenant by the curtesy; and whilst such, he took 30l. a year at Hasfield, and lived one year there with his two children, and then died: that the children being found with their grandmother at Tirley, were both removed to Hasfield: which order the sessions confirmed. And now the court, upon argument, con-

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firmed the orders as to the girl, but quashed them as to the boy. For as to the boy, he was tenant in fee of the 4 l. a year. And though it was not stated, that he was actually upon that spot, yet it was enough, that he had such an estate in the parish, from which he could not be removed. But as to the daughter, it is otherwise; she could demand no maintenance out of her brother's estate; and it was never yet determined, that children should go to a grandmother for nurture. She may indeed be charged to contribute to their relief in the parish where they are settled. *Str.* 1131. *Burrow's Settl. Cas.* 147.

T. 7 *G.* 2. *Sundrish and Hever.* *Thomas Perch* by indenture demised to *Thomas Gates* the father, a cottage at 5 s. a year, which was the full value, for 99 years. The lessee held it till his death, and devised it to *Thomas Gates* his son. And the question was, whether the son, as executor, being intitled to the term, shall gain a settlement by inhabiting in such cottage? By the court; Where a man lives upon his own, is a case of a very tender nature, and the law will not unsettle him: Persons to be removed under the statute of *C.* 2. are those that wander from place to place, and not those who live upon their own estate: And adjudged, that he gained a settlement. *Seff. C. V.* 1. 200. *Str.* 983. *Burrow's Settl. Cas.* 7.

E. 3 *G.* *South Sydenham and Lamerton.* A person possessed of a lease for years dies intestate; if the next of kin shall be said in law to be settled there, was the question: It was held not; he has only a right, which he must pursue by taking out letters of administration, and no right is vested in him till that is done. *Cas. of S.* 103.

T. 10 *G.* 2. *Farringdon and Widworthy.* The pauper being settled at *Farringdon*, removed to *Widworthy*, and lived there with his father in a cottage house of 30 s. a year, working as a day labourer. The father died intestate, possessed of the said cottage for the residue of a term, determinable on lives, leaving the pauper and another son. The pauper's brother took his distributive share of his father's estate in goods, and the pauper himself, after the father's death, continued in the cottage for five or six years, until the lease was determined: After which, and since the making out the order for his removal, he took out administration to his father. And the sessions quashed the said order, adjudging him to be settled at *Widworthy*. But by the court: At the time of making the first order, he had gained no settlement at *Widworthy*;

Widworthy; because nothing vested in him before administration was granted to him. If so, then that order for removing him was a good order when made. And the sessions ought not to have quashed it; though administration had been afterwards taken out. For they could not quash a good order, upon a matter which happened *ex post facto*. If this administration really gained him a settlement, there ought to have been a new order of two justices to remove him again to *Widworthy*. But taking out administration after the term was expired, could never give him an interest in the expired term. And whilst the term subsisted, not having taken out administration, he was in possession merely as a tenant at will. He was removeable by the parish; and his right would have been without foundation if administration had been granted to any one else. *Andr. 4. Burrow's Settle. Cas. 109.*

M. 4 G. Mursley and Grandborough. Sir John Fortescue demised a cottage of 30 s. a year, to one *Eden* for 99 years, reserving 12 d. rent: *Eden* assigns the terms to one *Gadden* in trust for his wife for life, and then in trust for his son, during the remainder of the term: The son dies, and leaves a wife, who, as administratrix to her husband, became intitled to this term, and she grants this cottage for 24 years, excepting two rooms, in which two rooms she lives, and marries one *John Chappel*. The question was, whether *Chappel*, as husband of an administratrix, who was intitled to the trust of a term only, and being intitled to a chattel in another's right only, was removeable by the 13 & 14 C. 2. And by the court, he is not; this is not a taking of a tenement under 10 l. for the 12 d. is not reserved as a rent, but only an acknowledgment usually paid on long leases. The case of a copyhold is stronger than this, for that is but an estate at will. To strip the man of his own, is the way to make him chargeable, for he may not be able to let it. Therefore the orders which adjudged this to be no settlement were quashed. *Str. 97. Sess. C. V. 1: 122.*

M. 11 G. Ashbrittle and Wyley. A poor man built a cottage, upon the waste belonging to my lord *Pembroke*, without his licence, who never offered to disturb the man in his possession, and he lived in this cottage for 30 years, and by his will left three guineas in the hands of his executors to purchase this cottage of my lord *Pembroke*. Upon his death, *Elizabeth* his only child, and heir at law, entred into the cottage, and after married one *Barrow*, and lived in the cottage, and they were in

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quiet possession for three quarters of a year. and then sold it. The question was, whether the daughter, and her husband *Barrow*, had gained a settlement by virtue of this inhabitancy, in the parish of *Wyley*, in which their cottage was. *Mr. Reeve* argued, that this inhabitancy gained no settlement: The cottager was a disseisor, and had no right to build upon the waste, and was at any time removeable by the lord of the waste, and if he might have been removed within 40 days, his long possession shall give him no title; for he must only be considered as a tenant at will, and consequently his continuance upon the cottage, though never so long, could give him no settlement: and if the cottager had no right of settlement, none claiming under him shall be in a better condition. The statute of 31 *El.* prohibits the building of cottages, therefore the erection of one is unlawful, and shall have no privilege or encouragement. I admit if one inhabits by virtue of a lease, or other good title, for 40 days, he gains a settlement. But the inhabitancy in this case was without any good title, and consequently can gain no right of settlement. These objections were answered by the court, who held it clearly to be a good settlement. And though it was further objected, that the cottager himself was sensible he had no right, by his devising money for the purchase of a term under the lord of the waste, yet it was over-ruled. And by all the court it was held, that when a man hath such a possession as he cannot be removed from, and hath enjoyed that possession 40 days, he thereby gains a settlement; and that is the reason why a copyholder or lessee for years gains a settlement by an inhabitancy for 40 days; for in those cases, the justices of the peace cannot determine his right: this present case is very strong; for the 30 years possession of the cottager, without interruption, would have been a good title in an ejectment; and for that reason the justices of the peace cannot determine his title. It appears upon the face of the order, that the cottager had a good title in ejectment, and in any case but in a real action. Lord Ch. J. *Raymond* said, he had known recoveries upon a 20 years quiet possession, and 20 years possession is a title to a plaintiff in ejectment as well as to a defendant. After so long a possession as this, it shall be presumed that the cottager had a licence to erect the cottage; but this case goes further, for besides the 30 years quiet possession of the cottage, here is a descent cast upon the daughter who was heir to the cottager, and *prima facie* it is an inheritance in the daughter;

ter, and an estate by disseisin is in law a good estate, and a fee simple, till it be defeated. Wherefore all the court held, that the justices had no jurisdiction in this case; for they could not examine into the title to the land. And the settlement in the parish of *Wyley* was adjudged to be good. *Seff. C. V. 2. 115. Str. 608.*

Purchase under
30 l.

2. That a purchase under the value of 30 l. shall not gain a settlement.

By the 9 G. c. 7. After March 25, 1723, No person shall be deemed to acquire any settlement in any parish or place, by virtue of any purchase of any estate or interest in such parish or place, whereof the consideration for such purchase doth not amount to the sum of 30 l. bona fide paid, for any longer or further time, than such person shall inhabit in such estate, and shall then be liable to be removed to such parish or place, where he was last legally settled before the said purchase and inhabitation therein.

No person] And as this shall not settle the person purchasing for longer time than he continues in the purchased estate, so it shall not settle any of his children, by any derivative settlement from him. As in the case of *Salford* and *Over Norton*, H. 4 G. 3. *Peter White*, the father of the pauper, being settled in *Over Norton*, in the year 1726, for the consideration of 29 l. purchased a tenement in the parish of *Salford*, of one *John Lardner*, whose wife was seised in fee of the said tenement, but did not join with her husband in the conveyance. The said *Peter* lived in the tenement so purchased ever since the time of the purchase, which was for the space of 36 years, and was still living there at the time of the removal. His son the pauper was born there, and lived with his father till he married, and then left his father's family about eight years ago, and lived in a separate tenement in *Salford* aforesaid, but never gained any settlement but what he derived from his father. The two justices removed him to the hamlet of *Over Norton*; and the sessions quashed that order. And in support of the order of sessions, it was urged, that here was a derivative settlement of the son at *Salford*, and he must be sent to that place which was the place of his father's settlement at the time of the son's removal. Before this statute, any purchase would have made a settlement; and this is a settlement to the father, whilst he inhabits on the estate; and the son's derivative settlement must be the same place, as his father was irremovable from it, at the time when the son was born.

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The father's settlement at *Over Norton* may indeed possibly revive, if he quits his estate at *Salford*: But it doth not appear that he ever will quit it, and *Salford* is his present settlement. He cannot have two at once; nor can he be removed from his own against his will. And the son could have no settlement at *Over Norton*; for the father never had any there since the son was born. On the other hand, it was argued, that the father's settlement is at *Over Norton*, and is only suspended during his inhabitancy upon the purchase at *Salford*: and if the son leaves the father, and gains no settlement for himself, he must be sent to the place which was the father's settlement at the time when the son left him. The son is become emancipated from the father; and the father himself is liable to be removed, as soon as he leaves the very spot which he purchased. Lord *Mansfield* delivered the resolution of the court: The question is, Whether the pauper ought to have remained in the parish of *Salford*, or have been removed from thence to the hamlet of *Over Norton* as his last legal settlement. And we are of opinion, that no settlement of the father was gained in *Salford* by the purchase, but only during the time of his inhabiting in the purchased premises. And this would have been equally the case, if the act had never been made: For he could not have been removed from his own estate, though he had no settlement in the parish where it lay. So that the father's settlement (if it may be so called) in *Salford* was only temporary, and did not extinguish his settlement at *Over Norton*. And the only settlement which the son could derive from his father was at *Over Norton*; for there could be no derivative settlement from the father at *Salford*, the father himself having no settlement there, but being only irremovable from his own estate. And this may be illustrated by a supposition, that the son had not resided in *Salford*, but had gone to live in a third parish, and had there been likely to become chargeable; and the question had arisen, whether he ought to be removed to *Salford* or *Over Norton*. He could not possibly in such case have been removed to *Salford*, because such removal would have been conclusive upon *Salford*, and he would remain settled there for ever: Consequently, he must have been removed to *Over Norton*. Which shews, that he can have acquired no settlement in *Salford*, by virtue of his father's purchase, even during the time of his father's residence upon it. And the order of

sessions was quashed, and the original order affirmed, *Burrow's Settl. Caf.* 516.

By virtue of any purchase] T. 30 & 31 G. 2. *Uffculme* and *St. Sidwell's*. *John Hine*, the pauper, purchased a tenement in *St. Sidwell's*, for 12l. He lived there, with his family; and was rated to the land tax and to the poor rate, thus, "Occupier, late widow *Hooper's*, now *John Hine's* tenement." He paid the rates. Afterwards, he sold the said tenement, and went, with his family, to the parish of *Uffculme*; from whence they were removed to the parish of *St. Sidwell*. The sessions, being of opinion, that the said *John Hine* did not gain a settlement in *St. Sidwell's* by being rated, and paying as aforesaid, the consideration of the said purchase being under 30l. did therefore vacate the said order. It was moved to quash the order of sessions. Lord *Mansfield Ch. J.* delivered the resolution of the court. It will first be necessary to consider, how the law stood before the making of the statute of the 9 G. Now before that act, no man was removable from his own; be the value of the purchase of it never so small and inconsiderable. And there were then other ways also of gaining settlements, as by serving a publick annual office, and being charged with and paying a share towards the publick taxes or levies and burdens of the parish. But this act was levelled only against fraudulent purchases of small value, made in order to gain settlements. And it declares, that purchases of less than 30l. value, *bona fide* paid, shall not gain a settlement for any longer time than the inhabitancy thereupon shall continue. After which, the purchaser shall be liable to be removed to his former legal settlement, prior to such purchase and inhabitancy upon it. And the established construction of this act hath been; pursuant to the intention of the legislature, to prevent fraudulent purchases. And therefore it hath been considered not to extend to what are called purchases in law, as devises, or other such methods of coming to estates; because they are not fraudulent. Whereas the present settlement is claimed, by being rated and having paid towards the publick taxes of the parish: Which is quite a different method of gaining a settlement. The man himself is here personally rated. The tax is laid upon a tenement, "late *Hooper's*, now *John Hine's*." But if he had been only rated as occupier, without adding his name, yet surely that would imply notice of the man's being an inhabitant. And we are all clear, that this act

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only means to put a negative upon a person's gaining a settlement by making a small purchase, with a fraudulent intention to gain a settlement thereby, in the parish where such purchase is made; and that it doth not affect any other method of gaining a settlement. And indeed it is but reasonable, that persons who have been rated and have paid towards the publick taxes and levies of a parish should receive assistance from that parish, when they become necessitous themselves. And the order of sessions was quashed; and the order of the two justices affirmed. *Burrow, Mansfield. 568. Burrow's Settl. Caf. 430.*

Purchase] *H. 3 G. 2. Sabridgeworth and Aldbury. Edward Sheppard*, the pauper, was born at *Sabridgeworth*. And his father being seised in fee of a copyhold cottage in *Aldbury*, which used to be let at 25 s. a year, did, about a year and a half before the removal, surrender the said copyhold cottage to his said son *Edward Sheppard* and his heirs, who was therupon admitted, and lived upon the same about a year and an half, and then sold the same for 14l. 2s. 6d. being the full value thereof. The two justices, and also the sessions, were of opinion, that this gained no settlement, being not such a purchase as the act intended for 30l. *bona fide* paid. It was moved to quash the orders of the justices; for that this estate in *Aldbury* was the pauper's own by a surrender from his father, and there was no difference between a surrender from a father and a descent. But the court denied the motion, without so much as making a rule to shew cause. For they not only thought that the surrender looked fraudulent, but they said that the intent of the statute was, to prevent persons gaining settlements who were any ways likely to be chargeable, and therefore provided, that they should be able to lay out 30l. in a purchase. And both the orders were confirmed. *Seff. C. V. 2. 161. 1 Barnardist. 297. Burrow's Settl. Caf. 56.*

But in the case of *Marwood and Kentisbury, H. 29 G. 2.* On a motion to quash an order of two justices, and an order of sessions confirming the same, for the removal of *Thomas Conibear* and *Mary* his wife from *Kentisbury* to *Marwood*. The case was; The said *Mary* had conveyed to her by her father, in consideration of natural love and affection, a cottage, garden, and plat of ground at *Kentisbury*, for the residue of a term of 99 years then determinable on the death of one *Joan Slocombe*, the confide-

ration of which purchase originally in the year 1689, amounted only to 20 shillings. *Mary* and her husband entred upon the premisses, and continued thereon for several years, until the lease determined by the death of the said *Joan*. Upon which, they were removed from *Kentisbury* to *Marwood*. It was urged, that the original consideration money not being 30 l. nor any consideration paid on the subsequent conveyance to the daughter, it was such a purchase as the statute intended should not gain a settlement. Unto which it was answered, that the intention of the legislature was not to extend the law to every kind of purchase, according to the extensive legal sense of the word purchase; for the very words import, that it is to be a pecuniary purchase, or where an equivalent is paid for an estate, and not where a man comes to an estate by will, donation, settlement on marriage, or the like. But if the word purchase were to be taken in that extensive legal sense, yet there is a difference in the present case; and the true question will be, what estate the husband had: For if the husband did not take by purchase, it will be of no consequence how the wife took; because he will gain a settlement by the inhabitancy, and she cannot be separated from him. He is in by act of law, in the right of his wife; and not by any act, consent, or traffick of his own. By *Ryder Ch. J.* If I had any doubt, I would not give an opinion now. This is not a purchase within the meaning of the act. The word purchase is not to be taken in the largest extent of it, but is confined to cases where a pecuniary consideration is paid. Otherwise, no devise, or gift, or settlement on marriage, would gain a settlement, unless there were a pecuniary consideration paid. The intention of the act was, to prevent settlements by purchases for small money considerations. In the present case, the husband is not to be considered as a purchaser, and therefore he acquired a settlement in *Kentisbury*. And by the court unanimously, the orders of the justices were quashed. *Burrow's Settl. Cas.* 386.

And in the case of *Ingleton* and *Astwick*, *E. 6 G. 3.* *Richard Speddy* and *Rose* his wife, residing under a certificate at *Astwick*, the father of the said *Rose* conveyed to her, in consideration of natural love and affection, a customary cottage at *Astwick*, to the use of herself for life, and after her decease to the use of *Jane* her daughter and her heirs. The said *Richard* and *Rose* his wife entred upon and continued in possession of the cottage for 16 years, and then pur-

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purchased of their daughter *Jane* her remainder in fee of the premises for 5*l.* and afterwards sold the whole for 20 guineas. Afterwards, the said *Richard Speddy* and *Rose* his wife becoming actually chargeable, were removed by order of two justices to *Ingleton* which gave the certificate. And the sessions, being of opinion that the said *Richard* and his wife gained no settlement in *Astwick*, confirmed that order. It was moved to quash these orders. And on shewing cause, they were given up by the counsel as indefensible, on the authority of the case of *Marwood*; this being a voluntary settlement, and not a purchase within the intent of the statute. *Burrow's Settle. Cas.* 560.

So in the case of *Ilmington* and *Mickleton*, T. 6 G. 3. *Elizabeth Stanley* purchased a leasehold tenement in the parish of *Mickleton*, for the sum of 6*l.* for the remainder of a term of 1000 years. She resided upon the same about 9 years, and then was married to *Theophilus Evans*, who resided with her upon the said tenement about 16 years; then he died; and after his decease, she continued upon the premises for several years, and at last sold the same for the sum of 6*l.* and after such sale, was removed by order of two justices to *Ilmington*, the place of her husband's settlement before their intermarriage. And the sessions, upon appeal, confirmed that order. It was moved to quash these orders. On shewing cause, it was urged in support of the orders, that this was a purchase by the wife, clearly within the words of the statute, under the value of thirty pounds, and the husband had no claim to it, but by virtue of that purchase. The term survived to the wife, on her husband's death. And if he had survived her, he could not have had it without taking out administration to his wife. On the contrary, it was answered, that this, though a new case, yet was within the reason of the former cases. In cases of descent, a settlement is gained, tho' the original purchase be under 30*l.* value: And there is as much reason why a settlement should be gained in the present case. This woman had an estate vested in her, when *Evans* married her; which, upon the marriage, vested in him. The husband gained a settlement in *Mickleton*, by 40 days residence upon his own estate; and his settlement communicated itself to the wife. And of this opinion was the court. And both the orders were quashed. *Burrow's Settle. Cas.* 566.

10002. (Settlement by estate.)

The sum of 30l. bona fide paid] E. 13 G. St. Paul's Walden and Kempston. There was a special order stated at sessions. A person purchased a copyhold tenement in St. Paul's Walden; which with the fine, and fees paid to the court, amounted to 30l. and it appeared by the same order, that the officers of the parish of Kempston had given him 40s. towards paying his fine and fees. Therefore it was insisted, that this was fraudulent, and not a good purchase within the statute, sufficient to gain a settlement. But by the whole court; we cannot take notice of its being fraudulent, unless the justices had adjudged it so. And the order was confirmed. *Foley* 238.

T. 8 & 9 G. 2. Tedford and Waddingham. Two justices remove Francis Gill from Waddingham to Tedford. Upon appeal, the sessions state specially a case to be laid before the judge of assize; viz. That Francis Gill being settled at Tedford, contracted with John Atkinson for a house and curtilage in Waddingham for 39l. which was conveyed to Gill and his heirs accordingly. Gill paid 9l. and Isaac Bristol paid the remaining 30l. to Atkinson, by Gill's order. About a month after the execution of the conveyance, Gill mortgaged the premises to the said Isaac Bristol. Gill continued in possession about four years after the mortgage. Then Bristol entred, by virtue of the said mortgage and a release of the equity of redemption. Then the inhabitants of Waddingham procured Gill, being out of possession, to be removed to Tedford. The order of sessions recites, that whereas the judges of assize had not time to hear and determine it, and whereas the parties agreed this to be the true state of the case; therefore, upon hearing counsel and further evidence on both sides, this court doth declare and adjudge, that the purchase made by Gill was fraudulent, and that the settlement of Francis Gill is at Tedford; but that the parishioners of Tedford are no ways concerned in the said fraud. — It was moved to quash these orders; and urged, that the justices in their adjudication depart from their premises. For the act doth not extend to any case where the consideration exceeds 30l. But here the consideration is above 30l. And it appears to have been bona fide paid by Gill; part by himself, and part by his order, (though by the hands of Bristol.) It doth not even appear that Bristol had lent it to him; therefore it shall be taken that it was Gill's own money. And no circumstances of fraud are stated: And therefore if this conclusion of the justices at sessions be drawn from the

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premises stated, it is a conclusion contrary both to the law and to the fact; and the court will themselves judge of it and set it right.—On the other side it was argued, whether the sum paid as consideration money was greater or less, if there be fraud, it poisons the whole. The justices are the proper judges of fraud; and they have adjudged that it was a fraudulent purchase. And it appears upon the face of the case, as stated for the judge of assize, that it was so. But that is not all: They are not confined to this state of the facts. For they heard further evidence on both sides, before they adjudged the purchase to be fraudulent.—By lord *Hardwicke* Ch. J. It must be further evidence of the same fact: For the state of the case made for the judge of assize was before agreed between the parties to be the true state of it. This case doth not appear to be within the act; for the act is confined to purchases under 30*l*. Now in the present case, the consideration was 39*l*. and was *bona fide* paid to the vendor. And it would be pretty hard to say, that the justices had a power upon this act to enquire, whether or no the purchaser borrowed the money. It is a common case, to borrow money to make up the price. And as to the fraud, it is true, that the justices are the proper judges of fraud. But fraud is a fact which must be found. It must be so by a jury upon a special verdict. The justices are judges of the fact; and they may judge of the fraud arising from the fact. If they had generally found the fraud, we might have been bound by such general finding: But when they state the facts particularly, the matter is as much open for our determination upon it, as it was for theirs. And the whole court was of opinion, that from the facts stated here is no sufficient evidence of fraud, And both the orders were quashed. *Burrow's Settl. Caf.*

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H. 15 G. 2. Cotleigh and Stockland. *John Spiller*, the pauper, was a mortgagee of a term for 15*l*. and 30*s*. were due to him for interest, and 18*l*. 10*s*. more on bond and simple contract. The mortgagor died. *Spiller* took out administration, as principal creditor; entered and was possessed; and so continued, till removed by the original order. By the court: *Spiller* gained a settlement, as a purchaser for a consideration of more than 30*l*. *bona fide* paid, *Str.* 1162. *Burrow's Settl. Caf.* 159.

H. 6 G. 3. Dunchurch and Smith Kilworth. *Edward Tanfur*, a certificate man from *Dunchurch*, together with his wife *Elizabeth*, were joint purchasers of a house, yard,

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and garden at *South Kilworth*, and paid for the purchase thereof 19l. and upwards. He laid out about 15l. more in repairs, and built a new shop on part of the premises; and was taxed after the rate of a tenement of 30l. value, and resided in the same till his death. After his death, his widow the pauper *Elizabeth* continued in possession for 10 months and more; afterwards sold part of the premises for upwards of 30l. and reserved part to herself; but removing out of the same into another house in the same parish, and becoming actually chargeable, she was removed by order of two justices to *Dunchurch* which gave the certificate, and the sessions confirmed that order. It was moved to quash these orders, for that the pauper on this state of the case had gained a settlement at *South Kilworth*. By the court: The whole question is, Whether this woman was a *bona fide* purchaser of an estate of 30l. value. She cannot be presumed to have come to it by descent, or executorship, or any such like act of law, because the contrary appears. She and her husband were joint purchasers. They took jointly and by entirety, and not by moieties. If so, she can only stand in the same situation as her husband did; which is that of a purchaser. And as to the value, the act takes it according to the purchase money actually paid; and no money afterwards laid out, can make the prior purchase of a greater value than it really was at the time of making it. Therefore she gained no settlement by this purchase. And the orders were confirmed. *Burrow's Settl. Cas.* 553.

Person not removable from his own.

3. That a person may not be removed from his own, altho' not settled thereby.

M. 30 G. 2. Aythrop Rooding and White Rooding. William Gates, husband of the pauper *Susanna Gates*, being settled at *White Rooding*, went away and left his wife and children. Whereupon she and her children went and lived for the space of 40 days, without her husband in a copyhold tenement of her husband's at *Aythrop Rooding*. Two justices remove her to *White Rooding*, as the place of her husband's settlement. The sessions, upon appeal, quash that order. It was moved to quash the order of sessions; and argued, that tho' this was the husband's own estate, yet his wife and children might be removed from it; that he himself could not have gained a settlement upon the said estate without residence upon it, for otherwise a man who had property in divers parishes might have different settlements at the same time. On the other hand, it

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was admitted, that neither the wife and children, nor even the husband himself, could have been removed to this place, where the husband had never resided; but it was insisted, that they were irremovable from it, as they were inhabiting upon their own estate. For they did not come to inhabit there as intruders or vagrants, but to reside upon their own; and no persons can be removed from their own, be the value ever so small, or let them come to it in what manner soever. By the court: There doth not appear any dissent of her husband from her going there, and therefore it is rather to be presumed that she went with his consent. The husband's settlement remains as it was, but nevertheless the wife was not removable from his estate. It is one thing to say, that a person may not be removed; and another, that such person doth not gain a settlement. The husband himself would not have been removable from his own, if he had gone thither. A man's right to reside upon his own estate is founded on *Magna charta*, which says, that a man shall not be disseised of his freehold. A wife hath a natural right to go and reside upon her husband's estate. If she had gone against her husband's consent, it would have made an alteration. And the court were unanimous, that the justices could not remove her from her husband's property. *Burrow's Settl. Cas.* 412.

E. 4 G. 3. Leeds and Blackfordby. Joseph Howe, husband of Anne Howe the pauper, took a tenement of 10l. a year at Blackfordby, and resided there above 40 days. Afterwards he took a tenement at Leeds of above 10l. a year, and went and resided there for above 40 days, leaving his wife at Blackfordby. Then he returned to Blackfordby, and stayed with his wife there 27 days. And on his leaving her, and going again to Leeds, two justices remove her from Blackfordby to Leeds, as to her place of settlement. It was agreed, that her settlement must follow that of her husband: But the court were of opinion, that the justices had no power to remove her from Blackfordby, whilst her husband's interest there subsisted. The husband himself could not have been removed from his own tenement at Blackfordby, the lease whereof was unexpired. And if they could not have removed the man himself from his own, it follows that they could not remove his wife so long as it remained his. *Burrow's Settl. Cas.* 524.

Whether a certificate person may gain a settlement by residing on his own estate.

4. *How far a certificate person shall gain a settlement by an estate of his own, notwithstanding the above-said statute of the 9 & 10 W.*

E. 5 G. Burclear and Eastwoodhay. Abraham Hacket comes with a certificate into the parish of *Eastwoodhay*, and afterwards marries one *Sarah Smith*. Her father surrenders to her a copyhold estate of 20 s. a year, and so the husband had it in her right. By the court; The man has gained a settlement in *Eastwoodhay*; for a man cannot be turned out of his own, be it never so small. And by *Fortescue J.* the party here could not be removed: And not removable, and gaining a settlement, are the same thing. Then it was objected, that the person being a certificate person, he gains no settlement, unless he rents a tenement of 10 l. a year, or exerciseth an annual office; and that statute being an explanatory act, is not itself to be explained, and consequently cannot be taken farther than the words. But by the court, This is not an explanatory act, but a new law, and must therefore receive a liberal construction. The exceptions in the statute prove this case, being a case more reasonable than either that are there mentioned; and the parliament never intended to put a certificate man in a worse condition than another person. *Caf. of S. 121. Str. 163. Burrow's Settl. Caf. 221.*

[Note, where it is said all along throughout this course of settlements, that a person not removable for 40 days thereby gains a settlement; this is to be understood with respect to the particular instance only then spoken of: For it is by no means universally true, that every person who resides 40 days unremovable doth become thereby legally settled. A *servant* not removable for 40 days, gains no settlement unless he serves out his year: A *bastard* with its mother for nurture for 40 days, doth not thereby acquire any new settlement: So a *wife* residing upon the husband's estate: So a *certificate person*, or one residing on a *purchase under the value of 30 l.* and not actually chargeable, though they are irremovable, yet by such residence they acquire no settlement.]

H. 31 G. 2. Cold Ashton and Woodchester. Case stated for the opinion of the court: In *July 1725*, *Daniel Harrison* and *Mary* his wife, and *William* their son, went with a certificate from *Woodchester* to *Cold Ashton*. They all levied in the parish of *Cold Ashton* from *July 1725*, till about *Christmas 1728*, at which time *William Fido* the father of the said *Mary* died intestate, leaving the said

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Mary his wife, at the death of the said *William Fido*, was then a term of years, and she herself and *William* their son, and *William* their son, entered upon the land, and lived in a house, and by the order of the court, ever granted, wife, or child, *Harrison* in the said house, the pauper removed) lived in the house, the said *Daniel* the widow of *Daniel* after the chargeable order of the certificate order, and by *certiorari* be quashed. *Daniel Harrison* from that time. Whether it is Lord Mansfield a certificate person not removable for it is not so. speaks only a year. But considered as a settlement by renting, the 13 & 14 that he cannot be made upon the principle on which

Mary his daughter and five other children, and being at the time of his death possessed of and intitled to a tenement and two acres and an half of land of the yearly value of 6l. 17 s. in *Cold Ashton*, for the remainder of a term of 99 years, determinable on the death of himself and the said *Mary* his daughter. Upon the death of *William Fido*, *Daniel Harrison* and *Mary* his wife and *William* their son, who was then about five years old, entred upon and took possession of the said tenement and land, and *Daniel Harrison* and *Mary* his wife have lived in and occupied the same ever since, till the removal by the order now appealed against. But no administration of the goods or personal effects of *William Fido* was ever granted to the said *Daniel Harrison* and *Mary* his wife, or either of them, or to any other person. *William Harrison* lived with his parents *Daniel* and *Mary Harrison*, in the said tenement, till about 1748, when he married the pauper *Mary* (by whom he had the four children removed); and after his marriage, he and his wife *Mary* lived in the parish of *Cold Ashton* separate and apart from the said *Daniel Harrison*, until the time of the death of the said *William*, which was in the year 1755. *Mary* the widow of *William Harrison*, and her four children, having after the death of the said *William*, become actually chargeable to the parish of *Cold Ashton*, were removed by order of two justices to *Woodchester* which had granted the certificate. Upon appeal, the sessions quashed the order, and stated the above case; which being removed by *certiorari*, it was moved that the order of sessions might be quashed. There were two questions, 1. Whether *Daniel Harrison* the father acquired any settlement different from that to which he was intitled by the certificate? 2. Whether if so, the son gained a derivative one?—
Lord Mansfield Ch. J. As to the first question, the case of a certificate man's gaining a settlement by residing on his own estate, is precisely the same as that of a common person not under a certificate, and arises by construction; for it is not within the words of the 8 & 9 W. which speaks only of serving an annual office, and renting 10 l. a year. But residing on a man's own estate, was considered as a stronger case than the casual property acquired by renting, because he has a settlement on the statute of the 13 & 14 C. 2. not by the words, but on the principle that he cannot be removed. This construction being made upon the reason, gives a greater latitude to the principle on which the construction is founded; and therefore
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a man who resides on his own estate, though of ever so small a value, is irremovable: And this holds equally in the case of a certificate person, who gains a settlement, if after he comes in by certificate, he is under such circumstances as by his property he cannot be removed. Whether in this case *Daniel Harrison* had such a property in this leasehold estate, when he first entred upon it, is a question that need not now be determined. What I ground my opinion upon is, that he has acquired by the length of possession such a right as he was not removable from. For the statute of limitations doth not operate by way of barring the remedy only, but it gives a right. He may bring an ejectment after 20 years possession; and no person could have recovered against him, because such person was out of possession all the time. I except the case of landlord and tenant; for there, the possession of the tenant is that of the landlord. This possession gives a title from which the parish officers could not remove him, nor the next of kin. In the case cited, *Farrington and Widworthy*, they had been satisfied their shares; and here, if they have not controverted it for such a length of time, it is to be supposed they have given up that right. If the case had turned on the general question, whether the next of kin gains a settlement without administration, I should have desired time to consider of it, and the cases cited. There is a material difference between the party's being sole next of kin, and where in common with others; as in this case; for where one is the sole next of kin, he has the undoubted right to administration. In general, it is of more consequence, that the law with regard to the poor's settlements should be certain, than what the determination is as to the particular case in question. As to the second point, of a derivative settlement to the son;—the word *emancipation* is a loose term in our law, especially in the matter of settlements, and is used in the books without affixing any precise idea. Indeed it is a term borrowed from another law, and not properly applicable to ours. The rule I take to be this: Children are intitled to the settlement of their father, till they have acquired another. As to the distinction made at the bar, that the son shall not derive a new settlement from his father, because it was acquired by the father himself after the son had left him; this might be material were the fact so, but it is not stated here to say that was the case, or that he left his father so as to change his derivative settlement. It is stated, that he lived 20 years with his father in this tenement,

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ment, or at least very near it, and we cannot intend that he did not.—Mr. justice *Denison* was of the same opinion, (Mr. justice *Foster* being absent,)—Mr. justice *Wilmot* : As to the father : I do not think it material to say any thing about the administration. Had the case turned upon that, it would have deserved consideration. If it be a matter already settled, I shall be for adhering to the rule (*Stare decisis*), which is a right rule, and more especially in the poor law.—Possession by wrong gives a title upon an ejectment against the legal owner. Here is a legal title without administration : After such a length of possession, one would be inclined to presume as much as possible. Now here it is possible that *Daniel Harrison* and his wife might have some grant or assignment from *William Fido* in his lifetime ; or some other regular and rightful title to the possession which they took of this tenement. So that their possession might possibly have been a rightful one—It would be too nice to be computing days, to see whether the son was with his father a day over or under 20 years.—And the order of sessions was affirmed. *Burrow's Settl. Cas.* 444.

E. 18 G. 2. *Stansfield* and *Spotland*. If an estate descends to a certificate person, it gains him a settlement, because it is by operation of law, and not by an act of his own ; and as the statute hath been laid open in cases of descents, it ought to be so in cases of purchases. And by *Lee Ch. J.* the statute of the 8 & 9 W. hath received a liberal construction ; and hath been held to gain a settlement, both in descents, and devises, and purchases. On the 13 & 14 C. 2. the construction has been, that let the value be what it will, a person cannot be removed from his own ; and it seems to be the same upon the certificate act ; for if he is not removable within the 13 & 14 C. 2. he is not removable on the certificate act. *Seff. C. V.* 1. 316. *Burrow's Settl. Cas.* 205.

M. 32 G. 2. *Shenston* and *Aldridge*. The wife of *Isaac Green* a certificate man, had an estate devised to her for life by her father ; upon which she and her husband enured, and lived thereupon for above 6 months. By the court ; *Isaac* hereby gained a settlement, notwithstanding the certificate. *Burrow's Settl. Cas.* 468.

T. 16 G. 2. *Deddington* and *Duns Tew*. A certificate man purchased a house for 42 l. lived in it many years, then sold it, and becoming chargeable was sent back. It was insisted, that the 9 & 10 W. c. 11. saying, a certificate man shall gain a settlement by no act whatsoever, unless the taking

taking 10 l. a year, or serving an annual office, this man, notwithstanding the purchase, might be sent back : and it was said to differ from the case of *Burclear* and *Eastwood-bay*, where the surrender of a copyhold to the certificate man's wife was held to gain him a settlement ; because there it was not his own act (as this purchase is) but it came to him by operation of the law. But the court did not think this a sufficient distinction, and said a purchase was in its nature an excepted case ; and his selling it afterwards made no alteration. *Str.* 1193. *Burrow's Settl. Caf.* 220.

H. 6 G. Ivinghoe and *Stonebridge*. A certificate man made a purchase in *Stonebridge*, and his apprentice lived with him for above 40 days upon the purchased estate there : And by the court, The apprentice thereby gained a settlement ; for when a certificate man maketh a purchase, he immediately ceaseth to be there in nature of a certificate man, and becomes a settled inhabitant, and consequently his apprentice with him. *Str.* 266.

Residence necessary.

5. *How far residence upon a man's own estate is necessary to gain him a settlement.*

H. 8 W. Rifelip and *Harrow*. By *Holt Ch. J.* Having land in a parish will not make a settlement, but living in a parish where one has land, will gain a settlement without notice ; for the act never meant to banish men from the enjoyment of their own lands. 2 *Salk.* 524.

M. 8 G. Wokey and *Hinton Blewet*. A person settled at *Hinton Blewet*, had an estate descended to him in *Wokey* ; whereupon the justices send him thither as to the place of his last settlement. But by the court, The order must be quashed ; for it is no settlement nor inhabitation, though if he should go thither he could not be removed : it may be a great injury to send him away from a good trade at *Hinton Blewet*, to perhaps half an acre of land, wherein he has but a term. *Str.* 476.

M. 25. G. 2. West Shefford and *Baydon*. *John Bird* came into *West Shefford* with a certificate from *Baydon*. During his stay at *West Shefford*, he became beneficially intitled to a leasehold estate of 14 l. a year there, determinable upon his own life. Upon which he entred on *Nov.* 17th, and continued in possession till the 15th of *December* following, being 28 days only, when he died. By the court : In all cases, whether of ownership of land, or renting 10 l. a year, a residence of 40 days is necessary. And the case of *Mursley* and *Grandborough* was cited as a case in point ; in which it was holden by

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the court, that any person who has an estate of his own, either freehold, copyhold, or a beneficial term for years, by act of law (as by descent, marriage, executorship, or administration) may dwell upon it as his own, and he is not removable; and gains a settlement, if he continue 40 days, tho' under 10 l. a year. But he must abide 40 days. And neither he nor his can be removed to it from any other place, unless he shall have resided 40 days. *Burrow's Settl. Caf.* 307.

E. 8 G. 2 K. and St. Mary Berkhamstead. The husband ran away, and it was not known whether he was alive or dead; in the mean time the wife had a house devised to her in *Northchurch*, and she and her children went to live there. The question was, Whether by continuing there in 40 days, they gained a settlement; The court seemed to be of opinion, since it was known that the husband was dead, he must be supposed to be alive, and in that case that the wife could not gain a settlement for herself, but must follow the husband's settlement; and that the husband having not resided 40 days at *Northchurch*, in the said house unremovable, he hath gained no settlement there. *Sess. C. V. 2. 182.*

But residence upon the *same estate* is not necessary, provided the residence be within the parish. As in the case of *Sowton and Sydbury*, *E. 12 G. 2.* A person who lived with his family at *Sowton*, having an estate at *Sydbury*, which the tenant gave up, went thither and lodged in an alehouse as a guest, without having any certain room there, and staid from *November* till *April*, but sometimes went to *Sowton*, where his children and family were, and to other places as his occasions required, possessed and managed his estate, by repairing fences, hoeing turnips, and the like. The question was, Whether such inhabiting, and not upon the estate, would gain a settlement? And the court were of opinion it would, and that it made no difference whether it were in his own house or in an alehouse; for being in the same parish, he could not be removed. *Sess. C. V. 2. 150. Viner Settlm. D. 12. Burrow's Settl. Caf.* 125.

Also it is not necessary that such residence should be *for 40 days together*. Thus in the same case of *Sowton and Sydbury*, the question was moved, Whether, since he did not reside there for 40 days together, but for more than 40 days in the whole, such residence should gain a settlement? And by the whole court: It is not necessary upon the statute, that the residence should be 40 days successively.

successively. *Seff. C. V. 2. 150. Andr. 345. Vin. Settl. D. 12. Burrow's Settl. Cas. 125.*

And, *T. 13 G. 2. St. Nyott's and St. Cleere. Nicholas Penquite* the pauper was born at *St. Cleere*; afterwards he gained a settlement at *St. Nyott's*; and from thence returned to *St. Cleere*, and lived there with his mother, on a tenement, in part of which he had an estate of freehold and inheritance, and of which he was seised in common together with his mother and sisters. He worked there as a day labourer, and lodged sometimes on his own estate and sometimes in other places where he worked in the said parish of *St. Cleere*, and at other times in other parishes adjoining; but did not live and reside on his said estate in *St. Cleere*, or in the said parish of *St. Cleere*, by the space of 40 days together at any one time, between his leaving *St. Nyott's* and selling his estate in *St. Cleere* (which was about 3 years after his returning to *St. Cleere*). By the court: This depends on the statute of the 13 & 14 C. 2. which directs the sending a pauper to the place where he was last legally settled for the space of 40 days. But this man continued, off and on, for more than 40 days. And it is not necessary that he should have resided there 40 days together. He was irremovable from *St. Cleere's* for above 40 days; and that is sufficient. *Burrow's Settl. Cas. 132.*

Conclusion.

AND now upon the whole, having gone through this subject of settlements, and I hope with some perspicuity and exactness; the first reflection which will arise in the mind of every reader, I think, will be, to admire the subtilty of human wit. It was the observation of a wise king of *Israel* long ago, that God made man upright, but they have sought ought many inventions. A stranger to our laws would not readily conjecture, how many doubts and knotty difficulties have been formed upon the construction of one short act of parliament; and one single clause of that one short act, and which upon the face of it doth not appear to carry any considerable difficulty.

The next thing that occurs, is to reverence the wisdom of the court of king's bench; in clearing up those difficulties, and establishing the sense of the law upon solid and firm grounds: Whose determinations, although they are not a law in themselves, yet they are the best and surest exposition of the law; being made by persons of distinguished abilities, educated and exercised in the profession of the law, after argument by able counsel.

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Which advantages are not ordinarily to be expected at a quarter sessions. So that the law seems now to be well settled as to these matters; and consequently the disputes about settlements cannot so much arise from the uncertainty of the law, as from the uncertainty of the facts upon that law: and this, from the nature of the thing, must always be uncertain, as depending upon the testimony of witnesses, and those also for the most part of the meanest of the people.

There hath been also another cause of much altercation, upon appeals against orders of removal, which arises from some defect in those orders themselves; or from some error in the method of proceeding in relation thereto: which comes next to be considered.

III. Of removals.

- i. *Order of removal in general.*
- ii. *Order of removal of a certificate person.*
- iii. *Appeal against the order of removal.*

i. *Order of removal in general.*

The statute of the 13 & 14 C. 2. c. 12. which hath been so often canvassed in treating concerning settlements, is not yet to be dismissed by us, but will appear again under this head; in a new and quite different light; as being that upon which all the orders of removal are or ought to be established. And in this view, there have been as many cases adjudged upon it; as in the other, although not altogether in so great a variety.

In treating of this subject; we will first set forth the statutes: Then the established form of an order of removal thereupon: And then take the same in pieces orderly and distinctly, thereby to discover the several shelves and rocks upon which numberless orders have been shipwrecked.

It is true, the statute of the 5 G. 2. whereby errors in point of form may be amended at the sessions, hath in some sort remedied these defects; but that it may appear how such errors are to be amended; and as it will be better if the order be such as shall need no amendment, and as it still remains a doubt upon that statute, what shall be

deemed matter of form, and what shall be deemed of the substance of the order, this method is not the less to be pursued upon that account.

By the 13 & 14 G. 2. c. 12. it is enacted as follows: *Whereas by reason of some defects in the law, poor people are not restrained from going from one parish to another, and therefore endeavour to settle themselves in those parishes where there is the best stock, the largest commons or wastes to build cottages, and the most wood for them to burn or destroy, and when they have consumed it, then to another parish, and at last become rogues and vagabonds, it is enacted, That it shall be lawful, upon complaint made by the churchwardens or overseers of the poor of any parish, to any justice of the peace, within 40 days after any such person coming so to settle in any tenement under the yearly value of 10 l. for any two justices of the peace (one whereof is of the quorum) of the division where any person that is likely to become chargeable to the parish shall come to inhabit, by their warrant to remove and convey such person to such parish where he was last legally settled, unless he give sufficient security for the discharge of the said parish, to be allowed by the said justices. s. 1.*

And if such person shall refuse to go, or shall not remain in such parish where he ought to be settled, but shall return of his own accord to the parish from whence he was removed, one justice may send him to the house of correction, there to be punished as a vagabond. s. 3. And by the 17 G. 2. c. 5. All persons who shall unlawfully return to such parish or place from whence they have been legally removed by order of two justices, without bringing a certificate from the parish or place whereunto they belong, shall be deemed idle and disorderly persons; and any one justice may commit them (being thereof convicted before him, by his own view, or by their own confession, or by the oath of one credible witness) to the house of correction, there to be kept at hard labour for any time not exceeding one month. s. 1.

And if the churchwardens and overseers of the parish to which he shall be removed, refuse to receive such person, and to provide work for him, as other inhabitants of the parish; any justice of that division shall bind any such officer in whom there shall be default to the assizes or sessions, there to be indicted for his contempt in that behalf. 13 & 14 C. 2. c. 12. s. 3.

And by the 3 W. c. 11. If any person be removed by virtue of this act, from one county, riding, city, town corporate, or liberty to another, by warrant of two justices; the churchwardens or overseers of the poor of the parish or town to which

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the said person shall be so removed, are required to receive the said person: and if he or they shall refuse so to do, such person so offending shall (on proof thereof by the oath of two witnesses before one justice of the place to which the person shall be removed) forfeit for each offence 5*l.* to the use of the poor of the parish or town from which such person was removed, to be levied by distress, by warrant to the constable of the parish or town where such offender dwells; and for want of sufficient distress, the said justice shall commit the offender to the common gaol for 40 days. *l.* 10.

Upon complaint made by the churchwardens or overseers of the poor of any parish to any justice of the peace] By these words one justice alone hath cognizance of the matter, so far as concerneth the complaint only: and by virtue thereof may issue his warrant to bring the party before him in order to his examination; or he may issue his warrant, to bring the party before himself and another justice, in order to hearing and determining the complaint; for he himself alone cannot hear and determine, but only bring the matter into the course of being heard and determined by two justices: and therefore it is most usual for the two justices originally to issue their joint precept to bring the party before them for that purpose. Nevertheless, if the party is willing, he may go voluntarily before the justices, at the request of the overseers, without any warrant at all.

The form of which warrants or precepts aforesaid, where they are requisite, may be to this effect:

Warrant of one justice for a person to be examined concerning his settlement.

Westmorland. { To the constable of —

FORASMUCH as complaint hath been made before me — one of his majesty's justices of the peace in and for the said county, by the churchwardens and overseers of the poor of the parish of — in the county aforesaid, that A. P. hath come to inhabit in the said parish, not having gained any legal settlement therein, nor produced any certificate owning him to be settled elsewhere, and that the said A. P. is likely to become chargeable to the said parish of — These are therefore to require you to bring the said A. P. before me, to be examined concerning the place of his last legal settlement,

*Herein fail you not. Given under my hand and seal the—
day of—.*

Warrant of two justices in order to the adjudication.

Westmorland. } To—

FORASMUCH as complaint hath been made before us —two of his majesty's justices of the peace in and for the said county, and one of us of the quorum, by the churchwardens and overseers of the poor of the parish of—in the said county, that A. P. hath come to inhabit in the said parish, not having gained any legal settlement therein, nor produced any certificate owning him to be settled elsewhere, and that he the said A. P. is likely to become chargeable to the said parish of—. These are therefore to require you to bring the said A. P. before us, at the house of—in—in the said county, on—the—day of—in at the hour of—in the afternoon of the same day, to be examined concerning the place of his last legal settlement, and to be further dealt withal according to law. Given under our hands and seals the—day of—.

It may also not be unfitting, especially in cases of doubt or difficulty, to give notice (if it may be) to the overseers of the parish or place where the settlement is supposed to be, that they may attend, if they think proper, when the adjudication is made; which probably might prevent appeals oftentimes from such adjudications and orders: Which notice may be to the effect following:

Summons to shew cause against an order of removal.

Westmorland. **T**O the churchwardens and overseers of the poor of the parish of—in the county of—, and to every of them.

This is to summon you, or some of you, to appear (if you shall so think proper) before—, and such other his majesty's justices of the peace for the said county of W. as shall be at the house of—in—in the said county of W. on—the—day of—in at the hour of—in the afternoon of the same day, to shew cause why A. P. should

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not to be removed from the parish of _____ in the said county of W. to your said parish of _____. Given under _____ hand _____ and seal _____ this _____ day of _____ in the year of our lord _____.

And then the general form of an order of removal, as grounded upon the statute of the 13 & 14 C. 2. above recited, may be thus :

The form of a general order of removal.

Westmorland. **T**O the churchwardens and overseers of the poor of the parish of Orton in the said county of Westmorland, and to the churchwardens and overseers of the poor of the parish of Penrith in the county of Cumberland, and to each and every of them.

Upon the complaint of the churchwardens and overseers of the poor of the parish of Orton aforesaid in the said county of Westmorland, unto us whose names are hereunto set and seals affixed, being two of his majesty's justices of the peace in and for the said county of Westmorland, and one of us of the quorum, that John Thomson, Mary his wife, Thomas their son aged eight years, and Agnes their daughter aged four years, have come to inhabit in the said parish of Orton, not having gained a legal settlement there, nor produced any certificate owning them or any of them to be settled elsewhere, and that the said John Thomson, Mary his wife, and Thomas and Agnes their children, are likely to be chargeable to the said parish of Orton : We the said justices, upon due proof made thereof, as well upon the examination of the said John Thomson upon oath, as otherwise, and likewise upon due consideration had of the premisses, do adjudge the same to be true ; and we do likewise adjudge, that the lawful settlement of them the said John Thomson, Mary his wife, and Thomas and Agnes their children, is in the said parish of Penrith in the said county of Cumberland : We do therefore require you the said churchwardens and overseers of the poor of the said parish of Orton, or some or one of you, to convey the said John Thomson, Mary his wife, and Thomas and Agnes their children, from and out of the said parish of Orton, to the said parish of Penrith, and them to deliver to the churchwardens and overseers of the poor there, or to some or one of them, together with this our order, or a true copy thereof, at the same time shewing to them the original ; And we do also hereby require

you the said churchwardens and overseers of the poor of the said parish of Penrith, to receive and provide for them as inhabitants of your parish. Given under our hands and seals the — day of — in the — year of the reign of his said majesty king George the third.

Westmorland] T. 2 G. 2. K. and the parish of St. Stephenson. There was an order of removal by the justices of the town of Bedford, from the parish of St. Peter's in Bedford, to the parish of St. Stephenson in the county of Bedford. And it was only said in the margin the Town of Bedford, without mentioning in what county. It was moved to quash this order; and insisted, that it was necessary to mention what county this Bedford lay in, because the appeal must be to the justices of that county where it lies. And of this opinion was the court; but did not quash the order, by reason of a flaw in the certiorari by which it was removed. 1 Barnardist, 177, 196.

To the churchwardens and overseers of the poor of the parish of Orton] If a place is extraparochial, and hath no overseers, the justices cannot remove from thence, because there are none neither to complain nor to convey; but the justices ought first to appoint overseers, and then to remove. 2 Salk. 487. Foley 97, 98.

Of the parish of Orton in the said county of Westmorland] The county in the margin is not sufficient, but it must appear in the body of the order that the place is in such county, either expressly, or by some words of reference, as in the said county, or in the county aforesaid. Cas. of S. 151. Sess. C. V. 2. 181.

In the case of *Holbeck and Gildersfen*, M. 16 G. 2. The borough of Leeds was in the margin, and the direction was, To the churchwardens and overseers of the poor of the township of Holbeck in the said borough. And by the court, That is well enough. And the distinction is, betwixt orders and indictments. In orders, the margin is to be considered as part of the order, and a clear plain reference to the county in the margin is sufficient: But in indictments, the county must be expressed in the body, and a reference to the county in the margin is not sufficient. Burrow's Settle. Cas. 193.

And to the churchwardens and overseers of the poor of the parish of Penrith in the county of Cumberland] As the justices

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tices cannot send from an extraparochial place, unless they have overseers, so neither can they send to an extraparochial place, which hath no overseers, because there are none to receive them. 2 Salk. 487. Foley 97, 98.

E. 1 An. St. George's and St. Olave's. The order was to convey one *Thomas Gill* to the parish of *St. Olave*, and it was directed, To the churchwardens and overseers of the poor of the parish of *St. Olave*. Quashed: for they ought and can only order the parish officers where the intrusion is made, to make the removal. 2 Salk. 493.

Of the parish of Penrith *E. 11 An. Spittlefields and Bromley.* A poor person was sent to the parish of *Stepney*, who did not appeal. On removal of the order into the court of king's bench, exception was taken, that the removal ought to have been to the township of *Spittlefields*; for *Stepney* is divided into four townships, and the poor have been removed from one township to another in the same parish, and the statute takes notice of townships as well as parishes, and *Spittlefields* is a hamlet of *Stepney*. By the court: If a person is removed to a wrong place, that place ought to appeal, and so *Stepney* ought to have done if it were a wrong place, or else the order will be conclusive upon them; but this is a matter here out of the record. Justices of the peace are not obliged to take notice of the division of parishes into townships and villages, which maintain their own poor severally and distinctly; and *Stepney* here upon an appeal might have shewn that the person did belong to the township of *Spittlefields*, which might have been a reasonable cause to discharge the order. Two townships within a parish are the same as two parishes; yet churchwardens are overseers of the poor of the whole parish (though so divided) and have a superintendency over the whole villages and townships. *Vin. Removal. H. 6.*

Upon the complaint *H. 12 G. 2. K. and Hareby.* It was moved to quash an order of removal, because it did not set forth any complaint made: And by the court, the objection is fatal, for the complaint is the foundation of the justices jurisdiction. *Andr. 361.*

Upon the complaint of the churchwardens and overseers of the poor *E. 1 An. Weston Rivers and St. Peter's.* Exception to an order of removal, in that it was said to be upon complaint only, and not of the churchwardens or overseers. By the court, This exception is fatal; for no

one can disturb a man coming into a parish, but they that have authority to do it: A complaint from one not concerned is nothing; it may be the parish is willing to keep him. 2 Salk. 492.

Upon the complaint of the churchwardens and overseers of the poor of the parish of Orton aforesaid] M. 9 An. Spalding and St. John Baptist. The order was, To the churchwardens and overseers of the poor of the parish of Spalding, and to the churchwardens and overseers of the poor of the parish of St. John Baptist: Whereas complaint hath been made by you——It was moved to quash the same for the uncertainty, because it did not say, by which: but by Parker Ch. J. Sure that is well enough, for it is upon complaint of the right, if both complain. Foley 267.

Unto us whose names are hereunto set and seals affixed, being two of his majesty's justices of the peace] An order was quashed, because it did not appear that it was made by two justices: It was only, Whereas complaint hath been made unto us; without reciting their authority as justices. 5 Mod. 322.

Two of his majesty's justices of the peace] M. 4 G. K. and Westwoodhay. On complaint to one justice, two justices adjudge and remove; and it was held to be well: Otherwise, where one justice sets his hand to the order in the absence of the other. Cases of S. 107. Str. 73.

T. 11 G. 2. K. and Wykes. It was held, that though the complaint may be to one justice, yet the examination ought to be by two, and those the same who sign the order of removal. Str. 1092.

And, most undoubtedly, the justices ought to be both together at the hearing and determining; tho' the practice in many places is otherwise.

Justices of the peace in and for the said county] M. 12 An. 2. and Uplin. The order was quashed, because it did not say that they were justices of the peace, but only justices of the county. Cases of S. 27.

In and for the said county] M. 13 G. K. and Owlton. Exception was taken to an order for saying —— unto us two of his majesty's justices of the peace in the county aforesaid; for that by this it appears only that they lived in the county, and not that they were justices for that county: And the court held this to be a fatal exception, and

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2 *Salk.* 474.

The said county] M. 8 W. It was objected to an order, that it did not appear thereby that the justices were of the *division*, which is required by the statute: But this objection was over-ruled, for that the statute therein is only directory. 2 *Salk.* 473.

The said county of Westmorland] Where two counties are mentioned before, the *county aforesaid* is bad for the uncertainty. As in the case of *Stepney and Chesham, E. 8 G. 2.* The order was directed to the churchwardens and overseers of the poor of two parishes in two different counties, and the justices call themselves justices of the peace for the *county aforesaid*. And the order was quashed; because it did not appear for which county they were justices. And the court can intend nothing. For those who act under a jurisdiction given by act of parliament, must shew their jurisdiction. *Burrow's Settl. Cas.* 23.

And one of us of the quorum] Abundance of orders formerly have been quashed, for not setting forth, that one of the justices was of the *quorum*; but now by the 26 G. 2. c. 27. no order shall be set aside for that defect only.

But if in fact neither of the justices shall be of the *quorum*, it seemeth nevertheless (except in the case hereafter mentioned, 7 G. 3. c. 21.) that such order shall not be good; for although the statute doth not require that the order shall set forth one of the justices to be of the *quorum*, yet it doth not require that one of them shall actually be so. And there are many towns corporate whose charters have no *quorum*, but only constitute certain of the chief officers justices to keep the peace, without giving them power to hear and determine felonies, trespasses, and other misdemeanors: That is to say, they have the power which the justices of the county at large have by the first assignment in the commission of the peace, which is the same that the conservators of the peace had by the common law, and is all that the justices of the peace had at first by their commission. The power of hearing and determining, which they have now by the second assignment in the commission, and which only implies a *quorum*, is a separate and distinct authority, and was super-added

added to the former some years after the institution of the office of justices of the peace; and this power the justices in divers towns corporate have not, and consequently can have no *quorum*.

E. 6 G. Albright and Skipton. Upon an appeal from an order of removal made by two justices (one of the *quorum*); the sessions, reciting that they had perused the charter of *Albright*, and it not appearing thereby that the two justices were either of them of the *quorum*, therefore they quashed the order of removal. But by the court, The order of sessions must be quashed; not for want of any power in the sessions to look into the jurisdiction of the two justices, for that they certainly have; but because that want of jurisdiction is not sufficiently alledged; since they might have a jurisdiction though it did not appear upon the charter of *Albright*. The sessions should have said in general, that it appeared to them, that the two justices were neither of them of the *quorum*, and that would have been good cause to quash the order of the two justices. *Str. 300.*

But now by the 7 G. 3. c. 21. This is in part remedied: For if in any city, borough, town corporate, franchise, or liberty, they have *one* (and no more than one) justice actually of the *quorum*; all acts, orders, adjudications, warrants, indentures of apprenticeship, or other instruments, done or executed by two or more justices qualified to act within such city or other place, shall be valid, although neither of the said justices shall be of the *quorum*.

That John Thomson] *M. 11 An. Southwell and Needwell.* Whereas a certain woman hath intruded, These are therefore to require you to convey: Objection, It is not said who this woman was. And by *Parker Ch. J.* You must either name her, or say a certain woman unknown. *Caf. of S. 57.*

T. 10 An. Cafe of Newington. Whereas such a person hath intruded into the parish, and is likely to become chargeable; These are therefore to require you to remove him *with three children*. Quashed as to the children, for they have removed more than is complained of. *Caf. of S. 45.*

Mary his wife, Thomas their son] *H. 10 W. Johnson's case.* Order to remove a man and *his family*, not good; because too general; for some of the family might not be removeable. *2 Salk. 485.*

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M. 5 G. Beaton and Siston. Order for removal of *Thomas Block* and his family: Upon the first reading quashed as to the family, because too general. *Str. 114.*

T. 9 W. Flixton and Rossen. Order to remove *Jane Smith* and her five children; Quashed as to the children, for the uncertainty; because it neither tells the names nor ages of the children: for she might have more children than five, and some of those five might have gained settlements. *Sess. C. V. 1. 11. Foley 278.*

T. 8 G. Hobey and Kingbury. Two justices adjudging the settlement of the husband to be at *Kingbury*, and that he is likely to become chargeable to *Hobey*, send him, his wife, and son of one year old to *Kingbury*; And whether this was good as to the wife and child, was the question: And it was held to be well enough; and the order was confirmed. *Str. 527.*

Thomas their son aged 8 years, and Agnes their daughter aged 4 years] *M. 9 An. 2. and Middleham.* Order to remove a child, of the age of ten years, to *Middleham*, because *Middleham* was the place where his father was last legally settled. Quashed by the court: for that there was no adjudication that *Middleham* was the place of the child's last legal settlement, and at that age it might have gained a settlement. *Foley 271.*

T. 10 An. Ringmore and Petworth. The order was, Whereas such a person and his 3 children are likely to become chargeable, and their last legal settlement, was at *Ringmore*. It was moved to quash the same, because the childrens ages were not set forth. But by the court, It is not necessary in this case; for the order says, they were last legally settled in *Ringmore*, and then no matter what their ages are. *Caf. of S. 41.*

H. 11 G. K. and Trinity. This rule was laid down; Every order that concerns the removal of a father and his children, ought to shew the ages of the children, for they may have gained a settlement in some other right, as by being apprentices or servants; therefore their age ought to be set forth, that it may appear to the court, that by reason of their infancy they have not gained any settlement in their own right, but have only a relative settlement from their father. Seven years is an age that the court will presume a child could gain a settlement at, in his own right; but if it appears upon the order that the child was above 7 years old, the order must set forth, that

that such child hath not gained a settlement in his own right. *Seff. C. V. 2. 74.*

So in the case of *Bowling and Bradford, H 15 G. 2.* The order removed the father and children (without setting forth their ages) from *Bradford* to *Bowling*, and adjudged *Bowling* to be the place of the father's last legal settlement. By the court: The established rule is, that where the children are sent in consequence of their father's settlement, either the ages of the children must be set out (to shew that they are of such tender years as not to have gained a settlement for themselves); or there must be an express adjudication of their having gained no other settlement. *Burrow's Settl. Cas. 177.*

Have come to inhabit] *E. 12 An. 2. and Graffham.* The order sets forth, that *Henry Tate* and his wife do endeavour to intrude into the parish. And quashed by the court; for that he cannot be removed out of the parish, unless he hath come into it. *Cas. of S. 16.*

Not having gained a legal settlement there] *E. 1 An. Wotton Rivers and St. Peter's.* Exception to an order of removal, that it was not said, that the poor person did not rent a tenement of 10l. a year, according to the words of the act. But as to this the order was held good. 2 *Salk. 493. 3 Salk. 254.*

Nor produced any certificate owning them or any of them to be settled elsewhere] For by the 8 & 9 *W. c. 30.* If they have a certificate, they cannot be removed for being likely to be chargeable, nor until they do actually become chargeable. But if the order set forth that they are actually become chargeable, then this clause therein, concerning the certificate, is superfluous.

Likely to become chargeable] *Scrivenham and St. Nicholas.* Order, not saying that the party was likely to become chargeable: Quashed. 3 *Salk. 255.*

H. 4 G. Teelby and Willerton. Order, Whereas complaint hath been made, that *Anne Stamp* may become chargeable.—We adjudge the same to be true. Quashed; for that the act enables the justices only to remove persons likely to become chargeable, and not persons that possibly may be chargeable, for no one can say who may not be chargeable; and there is as much difference in this case between *may* and *likely*, as between a possibility and a probability. *Seff. C. V. r. 117. Str. 77.*

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T. 10 *An. Order*, Whereas such a person will become chargeable, if permitted to abide. Objected, that is uncertain; it may be ten years hence; Quashed. *Cases of S. 39.*

Note; It doth not appear from any adjudged case, that upon appeal it was ever controverted, whether the person was or was not likely to become chargeable. And in the case of *South Sydenham and Lamerton*, T. 3 G. Mr. J. Eyre said, that by the words of the act, living on a tenement under 10 l. a year, and likely to become chargeable, are convertible terms. *Seff. C. V. 1. 115.*

Nevertheless, complaint must first be made, that the party is likely to become chargeable, before the justices can remove. And, in the case of *K. and Wykes*, T. 11 G. 2. an information was granted against a justice, for taking the examination of a person in order for his removal, upon the officers complaining, that he endeavoured to gain a settlement in the parish contrary to law; without complaining at the same time, that he was likely to become chargeable. *Andr. 238.*

It may be proper to take notice in this place, of the act of the 3 G. 3. c. 8. concerning officers, soldiers, and sailors, who served in the late wars; which makes a provision, with respect to such persons, that had not been made by any former act. Before this act, they might have set up trades in any city, town corporate, or other place, without being molested by reason of their exercising such trade; but for other reasons they might have been removed; as if they did not bring a certificate, and were likely to become chargeable. But now by this act, such officers, mariners, soldiers, and mariners, who have served since Nov. 22, 1748, and not deserted, and also their wives and children, may set up such trades as aforesaid, without any molestation by reason of the using of such trade; nor shall they, or their wives, or children, during the time they shall exercise such trades, be removable to their place of settlement, until they shall become actually chargeable. Two justices, in the mean time, may summon and examine them, concerning their place of settlement; and shall give them an attested copy of their affidavit, which shall be admitted as evidence in any general or quarter sessions.—So that such persons now, in like manner as certificate persons, shall not be removed until they shall actually become chargeable. So that their having served has the effect, in that respect, of a certificate;

cate; and in many cases is preferable to a certificate, since thereby they are in a better capacity of obtaining settlements for themselves, their children, servants, and apprentices.—And therefore the adjudication, as to such persons, must be that they are chargeable, and not that they are *likely to become chargeable*; for until they are chargeable, they cannot be removed.

So also, by the 7 G. 3. c. 40. the gate-keeper at any turnpike gate shall not be removeable from the toll house, until he shall be actually chargeable. *s. 46.*

To the said parish of Orton.] T. 10 An. 2. and Bradford.—Likely to become chargeable, but not said to what parish; Quashed. *Cases of S. 40.*

But in the case of *Barholm and Witham super montem; H. 5 G.* By the court: *It appearing to us that he is likely to become chargeable*, is sufficient, without saying to the parish from whence removed; for it is not to give a jurisdiction, but only the reason of the judgment. *Str. 142.*

And, *M. 7 G. Maidstone and Dething.* It was held well enough in an order of removal, to shew a complaint that the party is come into the parish of *Dething*, and is likely to become chargeable, without saying farther, to the said parish of *Dething.* *Str. 393.*

And, *E. 12 G. K. and Leofield.* An order of removal, whereby a person was adjudged likely to become chargeable, without saying, to the parish from whence removed, was confirmed. *Str. 698.*

These indeed are but scraps of cases, minuted down by gentlemen for their own private use, and therefore perhaps not certainly to be relied on. And in the case of *St. Nicholas Gloucester and St. Peter's Bristol, H. 11 G.* Upon an order of removal of *Mary White*, the reciting part of it was, Whereas the pauper was likely to become chargeable to the parish of *St. Nicholas*; but in the adjudicating part it was only said, that she was likely to become chargeable, without saying to the parish of *St. Nicholas.* The court allowed this to be a good exception, and said they would not take these orders to be good by intendment; for the court will not intend a jurisdiction in the justices, where they do not intitle themselves to it upon the face of the order. *Sess. C. V. 2. 73.*

And in the case of *Bourne and Spalding, E. 8 G. 2.* The complaint was, that the pauper was likely to become chargeable to the parish of *Spalding*; and the adjudication

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judication was, that the pauper was likely to become chargeable, generally, without saying to the said parish of *Spalding*. And by lord *Hardwicke* Ch. J. There must be either an express adjudication, or a plain reference to the complaint; because it is the very point upon which the jurisdiction of the two justices is founded. Here the complaint is right; but the adjudication is at large, there being no words of reference. It is only that the pauper is likely to become chargeable. Now this may be to his relations or parents, as well as to the parish. And he cited the case of *St. Nicholas's* and *St. Peter's* as similar to the present: And said, that the case of *Barholm* and *Witham* was not finally determined by the court, but was referred to the judge of assize. And he added, that there was no case that he could meet with, upon the strictest enquiry, whether an adjudication at large, without some words of reference to the complaint, was holden to be good. *Burrow's Settl. Cas.* 39.

So in the case of *Ufeulm* and *Chysthydon*, *M.* 13 G. 2. It was objected, that the paupers were said to be likely to become chargeable, but did not say to what parish. The words were, "And whereas upon due examination and enquiry it appears to us, and we do accordingly adjudge that they are likely to become chargeable." And by *Lee* Ch. J. and the court: The objection is fatal. A complaint must appear of the paupers being likely to become chargeable to the parish from whence removed; and there must be an adjudication of the truth of it. For the justices have no authority without such complaint and adjudication. We cannot support an order by implication. There is no necessity indeed for any particular form of words. But there must be an adjudication of it in some words or other. *Burrow's Settl. Cas.* 138.

And in the same term, between the inhabitants of *Ne-therton* and *Hoblench*, an order was given up as indefensible, on the like objection. *Burrow's Settl. Cas.* 139.

Upon due proof made thereof, as well upon the examination, &c.] *H.* 13 G. 2. *K.* and *Fisherton Dallemmer*. Upon due consideration was held to be sufficient; for that due consideration implies a due examination. *Seff. C. V.* 2. 45.

Examination] *T.* 12 *W. Ware* and *Stanstead Mount Fitchet*. Exception to an order, for that it was said, it appears

appears upon examination *before us or one of us*. By the court; The examination ought to be before both, because both are to make the judgment of removal. And Gould J. said. the statute directed, and the practice was; to make *complaint* to one justice; and he grants his warrant to bring the pauper before two justices; and then they two examine and remove. 2 Salk. 488.

Examination of the said John Thomson] T. 11 & 12 G. 2. K. and Wykes. A person ought to have notice, and be heard before he be removed: for he may produce a certificate, or give other sufficient security, or shew cause otherwise why he ought not to be removed; especially as he himself perhaps, by the removal, is likely to be the greatest sufferer: and therefore natural justices requires that he be not condemned unheard. Andr. 238.

Of the said John Thomson upon oath] H. 10 G. Munger-hunger and Warden. Exception was taken to an order, for that it was said to be made upon *due examination*, without saying *upon oath*: But by the court, This is sufficient; for where it is said to be made upon *due examination*, it shall be understood to be upon oath. Sess. C. V. 2. 40.

In the aforesaid case of K. and Wykes, one justice took the examination, and another two justices removed upon that sole examination, and in the order did set forth that the party was examined before themselves; for which, and for not summoning the party before them, an information was granted against the two justices. Andr. 238.

M. 13 G. 2. Coln St. Aldwin's and Highworth. The order of removal appeared to be wholly grounded upon an examination taken by two justices of another county; and was therefore quashed. They ought to have examined into the matter themselves; and in the presence of both together, and not separately. And tho' they were not bound to set forth the grounds of their adjudication; yet when they do set them forth, the court are to judge of them. And in this case, the examination which was relied upon being taken by two justices of another county, and the person examined by those justices remained still alive, for ought that appears to the contrary; it is plain, this deposition ought not to have been received as evidence to ground their adjudication upon; tho' it might perhaps have been used as concurring evidence. And lord chief justice Lee said, he had often heard

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heard it declared, that both justices ought to be present at the *viva voce* examination of the witnesses. And Mr. justice *Page* said, he remembred a case, wherein it was determined that both justices must be present; and that it is not sufficient for one justice to examine the matter and transmit it to the other, and that other to sign the order without examining into the matter himself. *Burrow's Settl. Cas.* 136.

Do adjudge the same to be true] *T. 13 W. Suddecomb* and *Burwash*. Order quashed, because it was only said to be complained by the officers, that the person removed was likely to become chargeable, but not adjudged so by the justices. 2 *Salk.* 491.

H. 4 G. K. and Westwood. Order quashed, because the justices only say, *We order him to be removed to such a place, as the place of his last legal settlement*, without adjudging that to be the place. *Str.* 73.

T. 3 & 4 G. 2. K. and Minchin-hampton. Order, Whereas complaint is made to us, that such a person is now become chargeable, we do adjudge that the last place of his lawful settlement is in the parish of *Minchin-hampton*. Objected, that here is no adjudication that he is likely to become chargeable; and quashed for this reason. *Sess. C. V.* 2. 93.

T. 4 G. Stallinburgh and Haxhay. On examination we do believe the same to be true. Quashed; for a man may believe a thing on uncertain evidence. *Sess. C. V.* 1. 131.

E. 10 An. Waltham Magna and Parva. Whereas such a person is likely to become chargeable, as we are *credibly informed*, these are therefore to require you to remove: Quashed, for that here is no adjudication that he is likely to become chargeable, and this is only the belief of another. *Cas. of S.* 38.

And we do likewise adjudge that the lawful settlement] *E. 9 W. Bury and Arundel*. Whereas complaint hath been made unto us, that *Jacob Duckin*, with his wife and children, came from his place of abode and last legal settlement in *Bury* to *Arundel*, We therefore require you to remove: Naught; for there is no adjudication of the justices which was his last legal settlement, but only a complaint that *Bury* was, which doth not appear whether true or false. 2 *Salk.* 479.

T. 12 An. Eglum and Hartley-wintly. An order adjudges that a man was settled at such a place; and there-

fore they remove his widow thither: Quashed; for that here were no adjudication of the widow's settlement, and she might have gained a settlement after the death of her husband. *Sess. C. V. 1. 45.*

T. 3 & 4 G. 2. K. and Warnhill. Adjudication that the last legal place of the pauper is at *Warnhill* in the county of *Berks.* Quashed; for that is no adjudication of the settlement. *Sess. C. V. 2. 92.*

M. 3 An. It was held, that legal settlement and last legal settlement are the same thing; because by every new settlement the precedent is discharged. *2 Salk. 473.*

M. 12 An. St. Mary Ottery and St. Mary's. The justices in their order say, that the poor person was last settled there according to their knowledge: By the court; they should have said, he was last settled there; an order is a judgment, and must be certain and positive: he might have been settled elsewhere, and they not know it. Quashed. *Cases of S. 32.*

And provide for them] The statute directs, that the place whither they are sent shall receive and provide for them; for which reason the same is inserted here in the order: but it seemeth that when the removal is into another county, those words are unnecessary, because ineffectual; for that the justices in one county cannot take order for the relief of poor persons in another county.

[Besides this general form of removal to the place of settlement, there may be other removals, as of wives to their husbands, children to their parents, apprentices or servants to their masters, or of persons brought illegally from one parish to another. But this is not in pursuance of the statute of the 13 & 14 C. 2. but of the general power of the justices in regulating matters relating to poor persons. Thus in the case of *K. and Banbury.* A constable without warrant brought a child from *Broughton* to *Banbury.* Two justices of *Banbury* made an order, reciting the fact, to return the child to *Broughton*, there to be provided for according to law. The court held the order good, for returning the child to the wrong doers; and therefore that part of the order was affirmed; but it ought not to be said, to be there provided for; but they are to be left to take their course according to law; therefore that part was quashed. *Comb. 372.*

So in the case of *K. and Gravesend, E. 13 W.* Two justices send *Jane Goodberry* from *Gravesend* to *Lawton* her master in *Chadwell* (with whom she was hired as a servant for a year) until she should be discharged. Afterwards, on the 21st of *November* the first order being made the 6th of *November* by the justices of *Gravesend*) another order was made by two justices of the county of *Essex*, to send the same person from the parish of *Chadwell* to the parish of *Gravesend*. It was insisted that the second order was ill, being made before any appeal from the first order, or discharge from the service. But not allowed by the court: For the first order was to send the person to her master, and not to send her to the parish of *Chadwell* as the place of her settlement. *Comyns* 97.—For both the orders in this case might well stand together: and the question upon the merits might be determined on appeal to the second order.]

SO much concerning the usual form of an order of removal: And after such order and adjudication is made, that the same may appear upon record afterwards, in order to charge the parish, it was said by *Holt Ch. J.* (1 *Salk.* 406.) that the most regular way for the justices to proceed is to make a record of the complaint and adjudication, and upon that to make a warrant to the churchwardens and overseers, to convey the persons to the parish to which they ought to be sent, and deliver in the record by their own hands into court the next sessions, to be kept there amongst the records, to charge the parish. But how such record shall charge the parish is not perhaps very evident; unless it shall appear likewise, that a removal was made in pursuance of such order: otherwise, how shall the parish be charged by an order which possibly they knew nothing of, and consequently could have no opportunity to appeal against. It is usual in some places, for the overseers who made the removal, to bring the original order to the next sessions, and there make oath, that they removed the party in pursuance of such order, and then if there appear to be no appeal against it, the order is confirmed by the court, and filed amongst the records. And although such confirmation is merely void, because the sessions have no jurisdiction therein, unless in the case of appeal, which here is not; yet such confirmation is also superfluous and needless, for the order not appealed against is final without more. And as such order is a record of itself, and contains in it the adjudica-

tion of the justices, it seemeth that the court may record thereupon likewise, that no appeal was made, for in that case they are the proper judges whether an appeal was made or not. But still it seemeth, that unless it be upon appeal, they have no power to enquire concerning the removal, for that as to them is extrajudicial: But the justices, who made the order, have a right to see it executed; and therefore they may enquire upon oath, whether the removal was duly made; and if it was they may record the whole. Which record of the whole proceedings, being delivered in at the next sessions, and the court thereupon recording likewise that no appeal was made, in such case perhaps the parish may be concluded. And the form thereof may be thus:

Westmorland. **B**E it remembred, that on the nineteenth day of January, in the thirty-second year of the reign of our lord George the second of Great Britain, France, and Ireland, king, defender of the faith, and so forth, at Middleton in the county aforesaid, Roger Thirnbeck overseer of the poor of the township of Middleton aforesaid in the county aforesaid, cometh before us, John Moore, esquire, and Richard Burn, clerk, two of the justices of our said lord the king, assigned to keep the peace of our said lord the king within the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, and of the quorum, And complaineth to us the said justices, and giveth us to understand and be informed, that Solomon Caradice, son of Alice Caradice, aged nine years, hath come to inhabit and doth inhabit in the said township of Middleton in the county aforesaid, and is likely to become chargeable to the said township, and that the said Solomon Caradice hath not gained any legal settlement within the said township, nor hath produced any certificate owning him the said Solomon Caradice to be settled elsewhere; and thereupon he the said Roger Thirnbeck prayeth our warrant to remove and convey the said Solomon Caradice to the parish or place where he the said Solomon Caradice was last legally settled.

And on the said nineteenth day of January in the year aforesaid, at Middleton aforesaid, in the county aforesaid, Margaret Caradice, grandmother of the said Solomon Caradice, cometh before us the justices aforesaid, and upon her oath on the holy gospel to her then and there by us the justices aforesaid administred, deposeth and sweareth that she the said Margaret Caradice had a daughter whose

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name was Alice Caradice, which Alice Caradice was never married, and is now dead, and that she the said Alice Caradice did bear the said Solomon her son, at the parish of Beetham in the county aforesaid, and that the said Solomon hath been carried or gone about the country ever since in a state of vagrancy, that is to say, wandering and begging, and doth now inhabit in the said township of Middleton with William Caradice grandfather of him the said Solomon.

Whereupon, and on due consideration had of the premisses, we the justices aforesaid, on the said nineteenth day of January, in the year aforesaid, at Middleton aforesaid in the county aforesaid, do make our warrant under our hands and seals in the form and words following; that is to say, [Here set forth the warrant of removal.]

And afterwards, on the twenty-first day of January in the year aforesaid, at Middleton aforesaid in the county aforesaid, the said Roger Thirnbeck, overseer of the poor aforesaid, cometh before us the justices aforesaid, and upon his oath on the holy gospel to him by us the said justices administred, deposeth and sweareth, that on the twentieth day of January in the year aforesaid, he the said Roger Thirnbeck did remove and convey the said Solomon Caradice from and out of the said township of Middleton to the said parish of Beetham, and him the said Solomon Caradice, together with a true copy of our warrant aforesaid, did deliver to O. P. overseer of the poor of the parish of Beetham aforesaid, at the parish of Beetham aforesaid in the county aforesaid. In witness whereof, we the said justices, at Middleton aforesaid, in the county aforesaid, the twenty-first day of January in the year aforesaid, to this present record do set our seals.

And to this may be annexed the order of removal, confirmed at the sessions on appeal, or not appealed against. And it may be proper to have duplicates; one filed at the sessions, and the other kept by the township.

By the 3 W. c. 11. as aforesaid, there is a penalty of 5l. inflicted on the churchwardens or overseers not receiving a person sent by warrant of removal. On which this case happened: *M. 28 G. 2. K. and Davis*. Indictment for refusing to receive a pauper, sent by order of two justices to the liberty of the Tower. Plea, not guilty, Verdict against the defendant. It was moved in arrest of judgment, that the 3 W. c. 11. having directed another method of punishment, to wit, a fine to be levied by warrant

rant of distress in a summary way, that should be strictly pursued.—*Dennison J.* If a statute create a new offence, and give a punishment, that rule must be followed; but if the offence was before at common law, and a new punishment only given, it is indictable also. So if one statute give one punishment, and another statute give another punishment, the prosecutor has his election. This was an offence before the 3 *W.* Such a parish officer might have been indicted on the 13 & 14 *C. 2. c. 12.* or what would have become of a pauper in case of disobedience between the passing those acts? But the 3 *W. c. 11.* does not relate to removals from parish to parish, but from county to county; and therefore there is no remedy but by indictment.—*Foster J.* In all cases where a justice has power given him to make an order, and direct it to an inferior ministerial officer, and he disobeys it, if there be no particular remedy prescribed, it is indictable. And judgment was given against the defendant. [To which may be added, that the statute of 13 & 14 *C. 2. c. 12.* requires in express words, that such officer refusing *shall be bound over to the assizes or sessions there to be indicted.*]

If the person removed returns of his own accord, without a certificate; the aforesaid act of the 13 & 14 *C. 2. c. 12.* and also the vagrant act of the 17 *G. 2. c. 5.* have directed that he shall be sent to the house of correction, according as is above expressed. In the case of *K. and Angell, T. 8 G. 2.* The justices of *Berkshire* had a petty sessions to search after vagrants, and a poor man residing in the parish of *Bingfield*, being examined, confessed himself to be settled in the parish of *Sunning*; whereupon the justices ordered him to be removed to *Sunning*. On his return from *Sunning* without a certificate, the defendant, who was one of the justices that had been present at the said petty sessions, did, without any summons, or oath made of his return, commit the man to the house of correction, where he was kept three days. Upon this, the court was moved to grant an information against the justice. The court allowed the transactions of the petty sessions in this case to be irregular, because there was no complaint made of his being chargeable or likely to be chargeable to the parish of *Bingfield*; but yet, as that was only a mistake of judgment, the court would not have thought it worthy of punishment; but the sending him to the house of correction, after having convicted him unheard, being contrary to natural justice, they were inclin-

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able to grant an information, but as no malice appeared in the justice, the court allowed the prosecutor to accept of some proposals made by the justice, to make him satisfaction. *Cases in the time of lord Hardwicke.* 124.

In the case of *Baldwin* and his wife against *Blackmore*, esquire, *E. 31 G. 2.* *Baldwin* and his wife were removed by order of two justices from *Marsden* to *Banknewton*. Which order was not appealed against. Afterwards, they both of them returned to *Marsden* without bringing a certificate. Of which, complaint being made in writing and upon oath to the defendant Mr. *Blackmore*, who was a justice of the peace for the county of *Lancaster*, he issued his warrant to bring them before him; who being accordingly brought, and the facts fully proved upon oath, he committed them to the house of correction, until they should be discharged from thence by due course of law. Upon the trial of this cause, there was a verdict for the plaintiff, and 1s. damages, subject to the opinion of the court, on the two following questions: 1. Whether there ought not to have been a previous conviction of vagrancy. 2. Whether the wife could be convicted of vagrancy, or be liable to be sent to the house of correction for returning without a certificate, as she only accompanied and resided with her own husband. On the argument of this cause, lord *Mansfield* intimated, that it would be a very right thing to compromise this matter; and he desired to be informed how the usage had been, about sending the wife to the house of correction with the husband: (tho' it would not indeed, as he observed, alter the law.) Afterwards this, case being mentioned as standing for the opinion of the court, Mr. *Norton* (for the defendant) said, he had several certificates of its being the practice, for justices to commit the wife, as well as the husband, for returning to the parish from whence they have been removed, altho' she so returned with her husband.— Lord *Mansfield* delivered the resolution of the court: He observed, that it was manifest the justice had not acted intentionally wrong. And it is plain that the jury were of that opinion, as appears by their giving only 1s. damages. The court would gladly therefore have leaned towards excusing this gentleman from suffering for what he had honestly and without any bad intention done, if they could have found him justifiable by any legal excuse. But there is one fatal objection to his proceeding, which we cannot get over, and which puts all the other points out of the case; and that is, that the warrant of commitment

is illegal. The legality of the warrant depends upon two acts of parliament, or at least upon one of them. For there are two acts of parliament, upon one of which two this warrant must be founded; tho' it doth not appear upon which of the two the justice proceeded. These two acts are, the 13 & 14 C. 2. c. 12. (a law made before the certificates under the late acts existed;) and the 17 G. 2. c. 5. (which relates to persons returning without bringing such a certificate.) Now the warrant is not within the former of these acts: The commitment is, *till discharged by due course of law*; whereas upon this act it should have been, *to the house of correction, there to be punished as a vagabond, or, to a publick workhouse, there to be employed in work and labour*. Nor can this warrant be good on the latter act; because the power given to the justice by that act is, *to commit such offenders to the house of correction, there to be kept to hard labour for any time not exceeding one month*: Whereas this warrant is quite general: It is an indefinite commitment; not for a precise limited time as the act directs. Therefore the warrant of commitment is totally illegal; and consequently, the plaintiff is intitled to the damages that he has recovered. *Burrow, Mansfield. 595.*

Note, It seemeth adviseable, if the party returns without a certificate, not to send him to the house of correction till the time for appealing against the order of removal shall be expired; for the sessions may quash the order. And the statute of C. 2. says, *if he shall not remain in such parish where he ought to be settled, he shall be sent to the house of correction*. And the 17 G. 2. says, *All persons who shall unlawfully return to such parish or place from whence they have been legally removed by order of two justices, shall be so sent to the house of correction*. It is true, the order may be supposed legal till reversed: But it may put the pauper to great inconvenience, in removing his goods, family, and trade; and then returning (possibly) after the next sessions.

ii. Order of removal of a certificate person.

As it will appear from what hath been said under the former head, concerning the removal of poor persons having no certificate, that in most of the books there are many bad orders; so it will appear also from thence, and from what will be said under this head, concerning the

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removal of certificate persons, that as to this kind of removal there is scarce one good order (which is a little surprizing in a matter of daily practice), yea scarce one which is capable of being amended even by the statute of the 5 G. 2. for there are objections which go to the very essence and substance of the order, especially the want of proper adjudications, either that the party is become chargeable, or of the place of his last legal settlement (for he may have gained one after the certificate), or both: for a judgment without adjudging, is a contradiction; and where there is no judgment, there is in strictness nothing to appeal against, but only an order that the parish shall receive and provide for a person, who for aught appears doth not belong to them.

By the 8 & 9 W. c. 30. *If any person who shall come into any parish or place, there to reside, shall deliver a certificate to one of the churchwardens or overseers there, such certificate shall oblige the parish or place granting the same, to receive and provide for the person mentioned in the said certificate, together with his family, as inhabitants of that parish, whenever they shall happen to become chargeable to, or be forced to ask relief of the parish, township, or place, to which such certificate was given; and then and not before, it shall be lawful for any such person, and his children, though born in that parish, not having otherwise acquired a legal settlement there, to be removed, conveyed, and settled in the parish or place from whence such certificate was brought.*
f. 1.

And by the 3 G. 2. c. 29. *When any overseer or other person shall remove back any persons or their families, residing under a certificate, and becoming chargeable, to the parish or place to which they shall belong; such overseer or other person shall be reimbursed such reasonable charges as they may have been put unto in maintaining and removing such persons, by the churchwardens or overseers of the place to which such persons are removed; the said charges being first ascertained and allowed of by one or more justices for the county or place to which such removal shall be made; which said charges so ascertained and allowed, shall, in case of a refusal of payment, be levied by distress and sale of the goods of the churchwardens and overseers of the place to which such certificate person is removed, by warrant of such justice or justices.*
f. 9.

Form of an order of removal of a certificate person.

Westmorland.

{ To the churchwardens and overseers of the poor of the parish of *Orton* in the said county of *Westmorland*, and to the churchwardens and overseers of the poor of the parish of *Penrith* in the county of *Cumberland*.

WHEREAS complaint hath been made by the churchwardens and overseers of the poor of the parish of *Orton* aforesaid in the said county of *Westmorland*, unto us whose names are hereunto set, and seals affixed, being two of his majesty's justices of the peace in and for the said county of *Westmorland*, and one of us of the quorum, that *John Thomson*, *Mary* his wife, *Thomas* their son aged eight years, and *Agnes* their daughter aged four years, having for some time last past dwelt in the parish of *Orton* aforesaid, being allowed so to do by reason of a certificate bearing date the ——— day of ——— in the year of our lord ——— under the hands and seals of *A. C.* and *B. C.* churchwardens, and *A. O.* and *B. O.* overseers of the poor of the said parish of *Penrith*, attested by *A. W.* and *B. W.* two credible witnesses, and allowed by *J. P.* and *K. P.* esquires, two of his majesty's justices of the peace for the said county of *Cumberland*, according to the directions of the several acts of parliament in such case made and provided, are become chargeable to the said parish of *Orton*; And whereas it appears to us, as well upon the oath of the said *John Thomson*, *Mary* his wife, *Thomas* and *Agnes* their children, nor any of them, have gained any legal settlement since the date of the said certificate: Whereby, and upon due consideration had of the premisses, it appears to us, and we do hereby adjudge, that the said *John Thomson*, *Mary* his wife, and *Thomas* and *Agnes* their children, are become chargeable to the said parish of *Orton*, and that the place of the last legal settlement of them and every of them is in the said parish of *Penrith* in the said county of *Cumberland*: These are therefore to require you the said churchwardens and overseers of the poor of the said parish of *Orton*, or some or one of you, to convey the said *John Thomson*, *Mary*, his wife, and *Thomas* and *Agnes* their children, from and out of your said parish of *Orton*, to the said parish of *Penrith*, and them to deliver to the church-

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wardens and overseers of the poor there, or to some or one of them, together with this our order, or a true copy thereof, at the same time shewing to them the original; And we do also hereby require you the said churchwardens and overseers of the poor of the said parish of Penrith, to receive and provide for them as inhabitants of your parish. Given under our hands and seals the ——— day of ——— in the year of our lord ———

Allowed by J. P. and K. P. esquires, two of his majesty's justices of the peace] *H. 9 An. K. and Newton.* Order for removing a certificate person, not setting forth that it was allowed by two justices, but adjudging the parish which granted the certificate to be the place of the last legal settlement. By Mr. J. Probyn; The order is good, for it sets out that the pauper came by certificate, and adjudges that he was actually chargeable, and that *Newton* was the place of his last legal settlement, he having gained no settlement elsewhere since; which sets out the whole reason of their judgment, and would make the settlement good, if there had been no certificate. *Sess. C. V. 1. 149.*

M. 7 G. Barleycroft and Cole-overton. Order of removal of a certificate person; It was not said that the certificate was attested, but only that it was allowed. But by the court, The attestation is by the statute made previous to the allowance; and therefore when they say it was allowed according to the act of parliament, we must intend it was attested, for otherwise it could not be so allowed. And the order was confirmed. *Str. 402.*

Are become chargeable] E. 9 An. 2. and Brumstead. An order of two justices for the removal of a man that came into a parish by a certificate, was quashed upon this exception; It was said in the order, that they removed him, because he was likely to become chargeable: And the whole court were of opinion, that the justices cannot remove a person that comes into a parish by certificate, till he is actually chargeable to the parish. *2 Salk. 530.*

H. 4 G. Teelby and Willerton. The justices remove a certificate woman, being likely to become chargeable. But by the court; She is by the statute not removable, till she actually becomes chargeable. And the order was quashed. *Str. 77.*

And we do hereby adjudge] T. 2 An. Maldon and Fleetwick. An order was made, reciting, that whereas complaint hath been made unto us, that such a person, who

is lately come into the parish with a certificate, is actually chargeable to the parish; these are therefore to require you to remove: And quashed, for that there was no adjudication. 2 Salk. 530.

T. 15 G. 2. *Great Bedwin and Wilcot*. Order of removal of a certificate person, in which there was no complaint of the churchwardens or overseers, nor any adjudication that the certificate person is actually become chargeable. On appeal, the sessions in pursuance of the 5 G. 2. amend the order in these particulars, as matter of form only, and insert in the said order such complaint and adjudication. And now the question was, whether these amendments went only to matter of form, or to the substance and merit of the order? By *Lee Ch. J.* There has been but one case in this court on this act since the making of it, and that was not determined: The present seems to be a very strong case against the power of amending. For there must be a *complaint* from the overseers, otherwise the justices have no power to remove; and a certificate person must be *adjudged* to be actually chargeable, otherwise he cannot be removed: And these amendments might be the real merits on which this case depended. And it would be a detrimental construction of the act, to take it so largely; and would be giving the sessions an original jurisdiction. And quashed by the whole court. *Seff. C. V. 2. 142. Str. 1158. Burrow's Settl. Cas. 163.*

But after all, it doth not appear, how it becomes necessary in the order of removal, to take any notice of the certificate at all, or to make any further use of it than as evidence to the justices of the settlement: And if it is not necessary to recite it, it is better to omit the same; because a misrecital, either in the date, or in the names of the persons, or in any other material parts, will be fatal, for that then there will be no such certificate as is there recited, and the order must fall of course. And I do not see, why the form may not be much more plain and simple by drawing the same very little varied from the common form of an order of removal of other persons having no certificate. It is true, where the persons are only *likely to be chargeable*, it is then requisite to set forth in the order, that they have no certificate; for if they have one, they cannot be removed till they actually be chargeable. But if the order do set forth that they are chargeable, in that case it is not at all material whether they have a certificate or not; for in both cases alike, they are then equally removable. And if so, then the form may be this,

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this, both for a certificate person, and for a person having no certificate, who is actually become chargeable :

Westmorland. **T**O the churchwardens and overseers of the poor of the parish of Orton in the said county of Westmorland, and to the churchwardens and overseers of the poor of the parish of Penrith in the county of Cumberland, and to each and every of them.

Upon the complaint of the churchwardens and overseers of the poor of the parish of Orton aforesaid in the said county of Westmorland, unto us whose names are hereunto set and seals affixed, being two of his majesty's justices of the peace in and for the said county of Westmorland, and one of us of the quorum, that John Thomson, Mary his wife, Thomas their son aged eight years, and Agnes their daughter aged four years, have come to inhabit in the said parish of Orton, not having gained a legal settlement there, and that the said John Thomson, Mary his wife, and Thomas and Agnes their children, are now chargeable to the said parish of Orton; We the said justices, upon due proof made thereof, as well upon the examination of the said John Thomson upon oath, as otherwise, and likewise upon due consideration had of the premises, do adjudge the same to be true; and we do likewise adjudge, that the lawful settlement of them the said John Thomson, Mary his wife, and Thomas and Agnes their children, is in the said parish of Penrith in the said county of Cumberland: We do therefore require you the said churchwardens and overseers of the poor of the said parish of Orton, or some or one of you, to convey the said John Thomson, Mary his wife, and Thomas and Agnes their children, from and out of your said parish of Orton, to the said parish of Penrith, and them to deliver to the churchwardens and overseers of the poor there, or to some or one of them, together with this our order, or a true copy thereof, at the same time shewing to them the original; And we do also hereby require you the said churchwardens and overseers of the poor of the said parish of Penrith, to receive and provide for them as inhabitants of your parish. Given under our hands and seals the — day of — in the — year of the reign of his said majesty king George the third.

It doth not appear what shall be done, if a certificate person, after having been removed, shall return with a new certificate; that is, whether or no the parish shall be obliged to receive him again, until he shall again become chargeable.

chargeable. It sometimes happeneth, that a certificate person is decoyed into acceptance of relief from the parish officers, in order that they may get rid of him. If a new certificate shall intitle him to return, this kind of practice may be frustrated. Upon a removal, the certificate is at an end. But the parish may grant him another. And there is no law which seemeth to give power to any parish to refuse him.—But this is a case not likely to happen frequently; because the parish granting the certificate must pay the charges of removing such certificate persons when chargeable, and of their maintenance in the mean time.

iii. Appeal against the order of removal.

Power of appealing.

1. *All persons who think themselves aggrieved by any such judgment of the said two justices, may appeal to the justices of the peace of the said county, at their next quarter sessions, who shall do them justice according to the merits of their cause.* 13 & 14 C. 3. c. 12. s. 2.

And by the 8 & 9 W. c. 30. *The appeal against any order of removal of any poor person, shall be had, prosecuted, and determined, at the general or quarter sessions of the peace for the county, division, or riding, wherein the parish, township, or place, from whence such poor person shall be removed doth lie, and not elsewhere.* s. 6.

All persons who think themselves aggrieved] E. 4 W. K. and Hartfield. Two justices removed Nicholas Wells, from the parish of Hartfield, to the parish of Frampsfield; from which order, Wells the party himself, and not the parish, appealed. It was objected, that the party himself cannot appeal, because the appeal is given only to the parish aggrieved: But by the whole court, The party may appeal as well as the parish. Carth. 222.

T. 4 G. K. and Almonbury. An order of two justices was quashed at the sessions upon appeal, without saying, *at the appeal of the party grieved.* And the court inclined to quash the order for this fault, till they were informed the precedents were most of them so, and for that reason and that only, as Pratt. Ch. J. declared, the order was confirmed. Str. 96.

At the next general or quarter sessions] E. 2 G. 2. K. and Norton. Exception was taken to an order of sessions, for discharging an order of removal, because the justices order was dated June 21, and the sessions order was not till

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Michaelmas sessions following, so that *Midsummer* sessions intervened. To this it was answered, that by the express words of the statute the appeal is to be to the next sessions after the parties find themselves aggrieved, which is not till the removal: and for aught appears *Michaelmas* sessions might be the next sessions after the grievance. And so it was held in the case of *Milbrook* and *St. John's* in *Southampton*, *M. 1 G.* To which the court agreed, and the sessions order was affirmed. *Str.* 831.

T. 11 W. K. and Langley. It was moved to quash an order of sessions, because the justices had adjourned the appeal from one sessions to another, and so the determination upon the appeal was not at the next quarter sessions. But by the court; The appeal must be lodged at the next quarter sessions, but when it is lodged, the justices may adjourn it. *2 Salk.* 605. *Comb.* 365.

But where the sessions itself is adjourned, the style of the sessions ought not to run *at such a sessions held by adjournment*, but the time of the first meeting of the sessions ought to be set forth, and that the same was continued to such further time by adjournment: As in the case of *Q.* and the inhabitants of *Hinderclieve*: An order made at the general quarter sessions of the peace *held by adjournment* was quashed, because it did not appear that this was the next general quarter sessions, for it might be that the sessions was begun, and continued by adjournment before the order was made. *Vin. Sess. T.* 4.

T. 10 G. 2. Heptonstall and Errendon. The sessions was said to be holden on such a day *by adjournment*, and it did not appear when the original sessions was holden. And the order was quashed for that cause. *Burrow's Settl. Cas.* 88.

H. 20 G. 2. K. and Polstead. Appeal was made to the quarter sessions in *Suffolk* held *April 7. 1746.* against an order of removal. The sessions was adjourned to *April 9.* at *Woodbridge*, where for want of a sufficient number of justices nothing could be done. *April 11.* a sessions is held at *Ipswich*, and adjourned to the 14th at *Bury*, where the appeal was allowed. It was moved to quash the order of sessions, as made without jurisdiction, the sessions ending for want of an adjournment at *Woodbridge.* And of that opinion was the court; for the words in the *2 H. 5. c. 4. and more often if need be,* were never considered as giving more than one original sessions in a quarter, but only empowering adjournments. The country must take notice of adjournments, but are not supposed to expect a new

new sessions till the usual time. And the order of sessions was quashed. *Str.* 1263.

T. 22 & 23 G. 2. West Torrington and North Thoresby. The sessions was held at Kirton; and from thence adjourned to *Caister*, at which place no sessions was held pursuant to the said adjournment. Afterwards a sessions was held at *Horncafile*; and the appeal was heard and determined there. By the court: The sessions at *Horncafile* could not take up the appeal, for want of jurisdiction. A quarter sessions must be holden four times in a year, as directed by statute; and it may be adjourned from time to time, and from place to place: But if it is once dropped, it cannot be resumed. *Burrow's Settl. Cas.* 293.

T. 15 G. 2. Roode and North Bradley. A person was removed from *Roode* to *North Bradley*. *North Bradley* gave notice of appeal; on which *Roode* took him back, but however got their order confirmed at sessions. The next sessions set both aside as fraudulent. And now *Roode* insisted, that the order was good, as not being appealed from at the next quarter sessions: And as to the other, that it was not in the power of one sessions to set aside the act of the other. All being now before the court, they quashed the first order, as being properly quashable on appeal; and would not take notice, that it was not at the next sessions after service of the order, which being in the case of a recent appeal, they would suppose to have been served too late for an appeal to the next sessions. And as to the order of confirmation, they quashed that, as not being made on any appeal, and consequently without jurisdiction, and at the same time quashed the latter part of the second sessions order, which rescinded that confirmation, as not being properly before them. *Str.* 1168.

For the county, division or riding, from whence the removal was] *E. 13 W. Watford and Wendover.* Two justices of *St. Albans* remove a poor person to *Wendover*. *Wendover* appeals to the sessions at *St. Albans*, where the order was confirmed. By the court; The appeal ought to have been to the sessions of the county, and not of the corporation; and as it was, it was *coram non judice*. 2 *Salk.* 490.

And in the case of *Malden, M. 11 An.* By lord Ch. J. *Parker*; where there is a town corporate that hath sessions of its own, and the justices within that town make an order

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order there, if the parties will appeal, they must appeal to the county sessions, and not to their own sessions, for then there would be an appeal *ab eodem ad eundem*, there being, it may be, the same justices sitting, who made the order.

Cases of S. 10.

T. 8 G. 3. East Donyland and St. Giles's Colchester. Two justices for the borough of *Colchester* removed the pauper from *St. Giles's* in *Colchester* to *East Donyland* in *Essex*; and on appeal to the quarter sessions of the borough, the justices there confirm the order, and state a case specially upon the facts for the opinion of the court of king's bench. Upon arguing the matter there, it was observed, that the appeal ought to have been to the county sessions. Unto which it was answered, that the parties having acquiesced in the jurisdiction, and entred upon the merits, and actually settled a case for the opinion of the court, they were not at liberty now to make the objection. But by the court: The borough sessions had no jurisdiction to make this order of confirmation; and therefore their opinion and their order are both nugatory. The appeal ought to have been to the quarter sessions of the county. As no such appeal has ever been made, the original order stands good as unappealed from. And accordingly, the original order was confirmed. *Burrow's Settl. Cas. 592.*

2. No appeal from any order of removal shall be proceeded upon, unless reasonable notice be given by the churchwardens or overseers of the parish or place appealing, unto the churchwardens or overseers of the parish or place from which the removal shall be; the reasonableness of which notice shall be determined by the justices at the quarter sessions to which the appeal is made; and if it shall appear to them, that reasonable time of notice was not given, then they shall adjourn the appeal to the next quarter sessions, and then and there finally determine the same. *9 G. c. 7. s. 8.*

Notice of appeal.

Reasonable notice] It is not expressed in the act, that this notice shall be in writing; but the court will better judge of the reasonableness of it, if it shall be in writing: And it may be thus;

TO the churchwardens and overseers of the poor of the parish of _____ in the county of _____.

This is to give notice to you and every of you, that we the churchwardens and overseers of the poor of the parish of _____ in the county of _____ do intend at the next quarter sessions of

Door. (Removal.)

the peace to be holden for the said county of——to commence and prosecute an appeal against an order of J. P. and K. P. esquires, two of his majesty's justices of the peace for the said county of——for and concerning the removal of——to our said parish of——. Witnefs our hands this——day of——.

A. B. } Churchwardens.
C. D. }
E. F. } Overseers of the
G. H. } poor.

Order not appealed against, is final.

3. *H. 12 An. Malendine and Hunsdon.* Two justices by an order send some poor persons to *Hunsdon*. Two justices there by an order send them back again. By the court: They ought to have appealed, and not sent them back; and held the order of the first two justices to be good, because there was no appeal against it. *Fol. 273.*

T. 12. W. Chalbury and Chipping Farringdon. A person was removed by order of two justices from a parish in *Warwickshire* to *Chalbury* in *Oxfordshire*, from thence by order of two justices to *Chipping Farringdon* in *Berkshire*: It was objected, That *Chalbury* ought to have appealed, and got the order upon them discharged. Which *Holt Ch. J.* agreed: For sending the poor man to another place, is falsifying the first order, which cannot be done, but by appeal; for the order of two justices is a determination of the right against all persons, till it be reversed: *Chalbury* should have appealed from the *Warwickshire* order, and got that set aside, and sent the man back thither; and the justices there should have sent him to *Chipping Farringdon*. Therefore the latter order was naught. 2 *Salk. 488.*

E. 5 G. 2. K. and Northfeatherton. Two justices made an order, by which they removed a man, his wife and 4 children, naming them, to *Featherton*; and there was no appeal. Afterwards *Featherton* finds out that this woman was not the wife, for that the man, tho' married to her, was married before to another woman, and consequently the second marriage totally void. And they remove the woman by her maiden name to *Horfington*, and the four children thither also as bastards. *Horfington* appeals; and the sessions upon hearing the matter state the case specially, that this woman and the 4 children were the same with the woman and children removed by the first order, and gave

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gave judgment that the first order was conclusive, and thereupon quashed the said second order. And by the court; They have slipped their opportunity, and the first order not appealed against is conclusive. *Self. C. V. 1. 154.*

M. 16 G. 2. Nympsfield and Woodchester. In 1731, a man and his wife were removed from *Nympsfield* to *Woodchester*, and there was no appeal. They had afterwards returned to *Nympsfield*, and had there three children, who were now sent from *Nympsfield* to *Woodchester* together with the father. And upon an appeal as to the children, it was offered to give in evidence, that the man had a former wife, and consequently the children born at *Nympsfield* were as bastards settled there. The sessions refused to let *Woodchester* go into this evidence, being of opinion, that *Woodchester* was concluded by the first order unappealed from, and that it made no difference that the children were born afterwards. The court, on debate, confirmed both orders: For the marriage being established by the first order, the settlement of the children (which is derivative) follows of course; and can no way be impeached, but by entering into the merits of the first order, which hath been acquiesced in. And nothing is more established, than that an order unappealed from is conclusive. *Str. 1172. Bur. Settl. Cas. 191.*

H. 6 G. 3. Silchester and Enborn. Two justices remove *George Wise* and *Jane* his wife from *Newbury* to *Enborn*, and their order was not appealed against. Afterwards, the parish of *Enborn* finding that *Jane* was not the wife of *George Wise*, two justices remove her, by the name of *Jane Moor* singlewoman, from *Enborn* to *Silchester*. *Silchester* appeals. And on hearing the appeal, it was proved, that the said *Jane* never was married to the said *George Wise*. And therefore the sessions affirmed this order of the justices. But by the court, The sessions order must be quashed. They said, that whatever the hardship might be in this particular case, or how doubtful soever this question might be if it were *res integra*; yet its being fully settled, was a reason for them not to depart from it now: For that *stare decisis* was always a good rule; and never more so, than in cases of settlements of paupers, where it would make the utmost confusion if they should overturn settled determinations, which the justices all over *England* had been used to look upon as the rules of their conduct in similar cases. If she was not his wife, it might have been controverted. But as they have

neglected to appeal, when they had a proper opportunity to shew it, they are estopped to say so now. *Burrow's Settl. Cas.* 551.

T. 21 & 22 G. 2. Sutton St. Nicholas and Leverington. John Buntin, the pauper, was removed from Sutton St. Mary's to Leverington. Leverington did not appeal. And yet the sessions confirmed this original order, though unappealed from. Four months after the first order, a second original order was made, to remove the pauper from Leverington to Sutton St. Nicholas. Which second original order was confirmed at the sessions upon appeal. By the court, the second original order, and the order of sessions confirming it, were quashed; and the first original order was confirmed. For Leverington was bound by the first original order unappealed from, unless some subsequent settlement appears. And four months is not a sufficient distance of time, whereupon to ground a presumption of having acquired a new settlement. And the order of sessions, confirming the first original order, was quashed, as being a voluntary and extrajudicial act of the sessions, to confirm an order which was not complained of.—And the like was done in the case of *Godalming and St. Michael's in Winchester*, in the 13 G. 2. The order of sessions, which confirmed the first original order, was quashed; because it was not made upon appeal. For which reason, it was agreed by the court and counsel to be void. *Burrow's Settl. Cas.* 276.

Sessions to proceed upon the merits.

4. By the aforesaid statute of the 13 & 14 C. 2. it is expressed, that the justices upon the appeal, shall do to the parties justice according to the merits of their cause.

And by the 5 G. 2. c. 19. *On all appeals to the sessions against the judgments or orders of any justices of the peace, the justices there shall cause defects of form to be rectified and amended, without any cost to the party, and after such amendment shall proceed to hear the truth and merits of the cause.* f. 2.

Court equally divided on the appeal.

5. *T. 8 & 9 G. 2. K. and the justices of Westmorland.* Order of two justices of the borough, for removing a poor family. Appeal to the sessions of the county, at which only four justices were present, who were equally divided; so no determination was made, nor the appeal adjourned. A *mandamus* was directed to all the justices of the county in general, to proceed on the appeal. It was returned, that at such a sessions an appeal was lodged, and that four justices only attended, two whereof were interested in the question, the other two were divided in opinion.

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It was agreed on all hands that this return was very odd, and not to be supported. Sir *Thomas Abney* objected, that the writ of *mandamus* was bad, and ought to be quashed, for that it doth not appear, that the appeal was before them; and that, for ought appears, the *mandamus* requires the justices to do an impossible thing, viz. to proceed on an appeal not before them, since the appeal being lodged at a former sessions, was not continued over to the subsequent sessions, and therefore was by law gone. Mr. *Robinson* on the other side said, that it was not usual in such cases to return the continuance; but that if in fact there was no such continuance, the fault was in the justices, who ought to have adjourned the appeal, till by the coming of more justices, the matter might have been determined. By Lord *Hardwicke* Ch. J. the question is, Whether there is a possibility of the justices proceeding in this appeal? He thought, if there was not, as there would be a failure of justice in this respect, an information ought to go against the justices who were at the sessions. He ordered the case to stand over, and recommended it to Sir *Thomas Abney* to advise his clients to proceed on the appeal, or return the continuances; and seemed at length inclined, if they did not comply, to grant a peremptory *mandamus*. Sess. C. V. 2. 193. But the pauper in the mean time running away, nothing further was done

6. *M. 3 An. St. Andrew's and St. Clement's Danes.* The sessions made an order, on an appeal from an order of removal, and afterwards the same sessions vacated it by a subsequent order; and a *certiorari* being brought, both orders of sessions were returned thereon. By *Holt* Ch. J. The sessions is all as one day, and the justices may alter their judgment at any time, whilst it continues; but they should not have returned the vacated order, but only the latter; for the effect of the court's setting aside the first order is, that it ceaseth to be an order, and consequently ought not to be returned as an order vacated by another order, but it should have been annulled and made nothing. 2 *Salk.* 494, 606.

7. *And for the more effectual preventing of vexatious removals and frivolous appeals, the justices in sessions upon any appeal concerning the settlement of any poor person, or upon any proof before them there to be made, of notice of any such appeal to have been given by the proper officers to the churchwardens or overseers of any parish or place (though they did not afterwards prosecute such appeal), shall at the same sessions* Costs on the appeal.

order to the party in whose behalf such appeal shall be determined, or to whom such notice did appear to have been given, such costs and charges in the law, as by the said justices in their discretion shall be thought most reasonable and just; to be paid by the churchwardens, overseers, or any other person, against whom such appeal shall be determined, or by the person that did give such notice; and if the person ordered to pay such costs, shall live out of the jurisdiction of the said court, any justice where such person shall inhabit, shall on request to him made, and a true copy of the order for the payment of such costs produced, and proved by some credible witness on oath, by his warrant cause the same to be levied by distress; and if no such distress can be had, shall commit such person to the common gaol, there to remain by the space of 20 days. 8 & 9 W. c. 30. f. 3.

M. 5 G. 2. *K.* and the justices of the county of Nottingham. A mandamus was granted for the justices to give costs to the party in whose favour the appeal had been determined; yet upon their return of it, the court held it reasonable for them to have the power of judging whether costs shall be allowed or not, and thereupon quashed the writ of mandamus. *Nelf. Justice. Tit. Poor.*

E. 16 G. 2. *Stansfeld and Spotland.* The sessions adjourned the appeal to the next quarter sessions, and ordered four guineas costs to the appellants: Which order was quashed as to the costs; for the sessions cannot give costs on a mere adjournment of the appeal, without hearing it, *Burrow's Settl. Cas.* 205.

Maintenance to
be reimbursed.

8. For the preventing of vexatious removals, if the justices shall at their quarter sessions, upon an appeal before them there had, concerning the settlement of any poor person, determine in favour of the appellant, that such poor person was unduly removed, they shall, at the same quarter sessions, order and award to such appellant, so much money, as shall appear to the said justices to have been reasonably paid by the parish or other place on whose behalf such appeal was made, towards the relief of such poor person, between the time of such undue removal, and the determination of such appeal; the said money so awarded, to be recovered in the same manner as costs and charges upon an appeal are to be recovered by the statute of the 8 & 9 W. 9 G. c. 7. f. 9.

E. 3 G. 2. *St. Mary's Nottingham and Kirklington.* Motion for a mandamus to the justices of the town and county of Nottingham, commanding them to allow the parish of Kirklington the expence and charges their officers had

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had been put to, in keeping a poor person from the time of his removal, till the order was discharged by the sessions upon appeal. And a *mandamus* was granted. *Seff. C. V. 2. 67.*

M. 16 G. 2. Great Chart and Kennington. The order of the two justices was quashed by the sessions for insufficiency; and the sessions thereupon order, that the costs of maintaining the pauper, since the time of his removal, shall abide the event of the cause, in case the said parish of *Great Chart* shall think proper by another order to remove the pauper to the said parish of *Kennington*. Which order, as to the costs, was quashed by the court of king's bench; because the sessions must either give or not give costs at the time when they make their order. *Burrow's Settl. Cas. 194.*

9. *M. 13 W. Mynton and Stony Stratford.* By *Holt Ch. J.* Order confirmed upon the appeal, is final. and the court; If on appeal to the sessions an order be discharged, that judgment binds only between the parties: But when upon appeal an order is confirmed, that is conclusive to all persons as well as to the parties; for it is an adjudication that this is the place of the party's last legal settlement. 2 *Salk. 527.*

M. 10 W. Harrow and Rifelip. A person comes into *Harrow*, and being likely to become chargeable, was removed to *Rifelip*. *Rifelip* appealed; and upon the appeal he was adjudged to be settled at *Rifelip*. Afterwards *Rifelip* discovered, that *Hendon* was the place of his last legal settlement, and sent him thither; and the question was, Whether after the adjudication upon the appeal, *Rifelip* was not estopped against all the world, to say, that *Rifelip* was not the place of his last legal settlement. By *Holt Ch. J.* *Rifelip* is estopped to say otherwise; for if *Rifelip* had not been the very place of his last legal settlement, the justices must have sent him back to *Harrow*, who were first possessed of him, for that reason, because they were possessed of him, and he did not belong to *Rifelip*. And now this is in effect the same question again, namely, whether he belongs to *Rifelip*? Which question has been already determined by the justices on the appeal, who have adjudged that he was last settled at *Rifelip*. Now this point being determined, the appeal must be final and conclusive, otherwise there would be no end of things. 2 *Salk. 524.* 3 *Salk. 261.*

M. 6 G. Little Bitham and Somerby. A person is sent by order of two justices to *Somerby*, as the place of his last legal settlement. *Somerby* appeals, and the order is confirmed.

firmed. Soon after, without stating that he had gained any new settlement, *Somerby* sends him to a third place. By the court, An order of reversal is final only between the two parishes; but if it be confirmed, it is final as to all the world; and therefore no new settlement appearing, the order of removal from *Somerby* must be quashed. *Str.* 232.

Order quashed on the merits, conclusive only between the parties.

10. *H. 10 W. St. Michael's Bedingham and Kingston Bowsey.* Order reversed on the appeal is conclusive only as to the parish acquitted, but the first parish may remove again to any parish not party to the former removal. 2 *Salk.* 1486.

T. 9 G. Foston and Carlton. Two justices send a poor person from *Foston* to *Carlton*. On appeal the order is quashed; and at three months end, two justices, without shewing any new settlement since the last order, make a new order to remove him from *Foston* to *Carlton* a second time. But by the court, The last order must be quashed: The case of *Barrow and Ingolsby, E. 11. An.* was at the distance of nine months, but the court quashed it, because there could be no inconvenience in putting them to shew a new settlement. *Str.* 567.

E. 29 G. 2. Bradenham and Thame. Two justices by order of removal, dated *December 30, 1754*, send *John Saunders* and *Sarah* his wife and four children from *Thame* to *Bradenham*, as the place of their last legal settlement. *Bradenham* appealed to the next (*Epiphany*) sessions, and the order of two justices was discharged. Afterwards on *March 28, 1755*, two justices make a new order, for removing *Sarah* the wife of *John Saunders* and her children from *Thame* to *Bradenham*. Upon appeal, the sessions adjudge the last settlement of *Sarah Saunders* and her children to be in the parish of *Bradenham*, and confirm the order. On removal of these four orders into the court of king's bench, it was moved to quash these two last orders; and argued, that the order of reversal was conclusive between the two parishes, that so there might be an end of things; and that one sessions shall not counteract and control the acts of a former, unless they state specially, which they have not done here. By the court; The last orders must be quashed. We must take the appeal, on which the original order is discharged, to be on the merits. The matter has been determined already between these two parishes, and it must be conclusive. But it is said, there are cases where there may be a new removal, as supposing there had been one or two years distance between the two orders of removal, or a suffici-

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ent time to gain a new settlement; yet the court will not intend one gained, unless it is stated in the order. And in this case there is no such time. *Burrow's Settl. Cas.* 394.

E. 19 G. 2. Osgathorpe and Diseworth. A person was removed by order of two justices from *Diseworth* to *Osgathorpe*; which order on appeal was discharged. He was by a second order sent from *Diseworth* to *Osgathorpe* as a certificate man; and upon an appeal it was stated, that the first removal was *before* he became chargeable, and the second *after* he became so; and the sessions were of opinion, that the first determination was not final between the parishes, and therefore confirmed the second order of removal. It was moved to quash these two last orders, on the authority of those cases wherein it hath been determined, that a reversal is final between the parties. But by the court, So it would be, if the special matter did not appear; a certificated person cannot be sent back, until he is actually a charge: a removal before is premature: The consequence of which only is, that he must be suffered to remain till he doth become chargeable, but not to make a premature removal final for ever. The last orders must be confirmed. *Str.* 1257.

H. 8 G. 2. Cirencester and Coln St. Aldwin's. The pauper was removed from *Minety* to *Coln St. Aldwin's*; and on appeal the order was reversed. Afterwards he was removed from *Cirencester* to *Coln St. Aldwin's*. The former removal was on complaint of the parish of *Minety*; the latter on complaint of the parish of *Cirencester*: The parish to which the pauper was sent on both complaints, was *Coln St. Aldwin's*: On appeal against this latter order, the sessions quashed the same, because they thought the first order conclusive. By the court: An order confirmed binds all the world: But when discharged, it is binding only between the parties concerned. For the discharge of the order doth not determine where the pauper is settled; but only, that he is not sufficiently proved to be settled in the particular parish to which the justices had removed him. And lord *Hardwicke* Ch. J. said, he took it to be clearly settled, where an order of removal is confirmed, that it is conclusive to all the world; where it is discharged, that it is conclusive only between the two contending parishes: And this distinction is reasonable; because a third parish may be able to give better evidence than the other could. And this latter

ter order of sessions was quashed. *Burrow's Settlement Cas. 17.*

E. 30 G. 2. Bentley and Baxterly. The pauper was first removed from *Baxterly* to *Stourbridge*, which order, on appeal, was discharged. Then *Baxterly* removed to *Bentley*, and *Bentley*, upon appeal, offered to give evidence, that the pauper had gained a settlement at *Stourbridge*, subsequent to the settlement which they acknowledged he had gained in *Bentley*: The sessions refused to hear this evidence, because the settlement set up in *Stourbridge* was anterior to the first appeal made by *Stourbridge*, and confirmed the order of removal to *Bentley*.—By lord *Mansfield Ch. J.* and the court. An order confirmed concludes all the world. It is a suit instituted and determined by a court having proper jurisdiction, between all proper parties. For the parishes and the pauper were the only proper parties. It is establishing one certain fact, which when ascertained regards all the world, and is not to be considered in the light of a *res inter alios acta*. So the finding that such a one was the father of such a child, or the fact of a marriage, or that a person is executor, by suit properly instituted in the spiritual court; in all these cases, when the fact is once established by proper judges, and between proper parties, it is a truth which regards the whole world. But an order discharged, is only a kind of negative finding, that such a settlement is not the last legal settlement. But does this establish the affirmative, namely, What is so? There is all the reason in the world to let in a third parish, not party to the suit, to give what evidence they can; because it would otherwise open a door to much collusion between parishes. The sessions in substance have said no more than this; “Upon the case made out to us, the pauper is not settled at *Stourbridge* ;” but this ought not to conclude the third parish from giving what evidence they can to discharge themselves. And nothing is more common in settlement cases, than for one parish to be able to get at evidence, which another parish could not produce.—And the orders were quashed. *Burrow's Settl. Cas. 425.*

11. An order of two justices, if quashed at the sessions upon an appeal, for want of form only, is not conclusive between the two parishes. *Foley 276.*

12. It was moved for setting aside an order of sessions confirming an order of two justices upon appeal. But the court would hear nothing of the merits of the cause, the

Orders quashed for form, not conclusive between the parties. Superintendency of the court of king's bench.

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the order of sessions being in that case final, unless there had been error in form. 1 Ventr. 310.

M. 9 An. South Cadbury and Braddon. On appeal to the sessions, the court discharged the first order. It was moved to set aside the order of discharge, because the justices do not say, whether they discharge it for form, or on the merits; for if it was for form, the parish is not bound; but if on the merits, the parish in consequence is hereby discharged for ever. But by the court: The justices are not bound to express the reason of their judgment, any more than other courts; but the reason of their judgment must be collected from the record. Particularly,

If the sessions reverse the first order, and that being removed appears to be good, this court will intend it was reversed on the merits, and affirm the order of sessions.

If the sessions reverse the first order, and that being removed appears not to be good, we must intend it was reversed for form, and affirm the order of reversal.

But if the sessions affirm the first order, and that appears to be good, we must affirm the order of sessions.

But if the first order appears bad, and the sessions affirm it, this court will reverse it, because it appears naught. 2 Salk. 607.

So that the case is this: If the sessions by their order do barely affirm or quash the order of two justices, and both the said orders are removed into the king's bench, the court hath nothing properly before them to judge upon, but the validity of the first order of the two justices. And if that order appears *good as to form*, and is confirmed by the sessions, the court will intend it was confirmed upon the merits; If it is *good as to form*, and *quashed* by the sessions, the court will intend it was quashed upon the merits; If it is *bad as to form*, and is *confirmed* by the sessions, the court will quash the confirmation, because it appears to be erroneous; If it is *bad as to form*, and is *quashed* by the sessions, the court will intend it was quashed for form.

But if the sessions, by their order, do not barely affirm or quash the order of the two justices, but set forth the reasons of their said order, and state the case specially thereupon; then the court will judge upon the case so stated by the sessions; that is to say, they will judge of the law as it arises upon those facts stated, but not of the facts themselves, for those they will suppose to have appeared sufficiently to the justices upon the evidence. And

And this is the method, when the justices are doubtful in point of law, whereby to obtain the opinion of that court, namely, in their order of sessions which confirms or quashes the order of the two justices, to state the case specially; and then the party which is not satisfied, by procuring the same to be removed into the king's bench by *certiorari*, may have it determined there by the judgment of that court, who will quash or confirm the order of sessions as they see cause.

If the justices will not state the case specially, tho' it may be a blameable conduct in them in some instances, yet there are no means to compel them. As in the case of *Oulton and Wells*, M. 9 G. 2. Two justices removed three children of *Francis Ailmer* from *Wells* to *Oulton*; and the sessions upon appeal confirm their order, generally, without stating any special case. The counsel for *Oulton* excepted at the sessions to their refusing to state the case specially, and delivered into court a bill of exceptions under their hands, which was read and received by the court. The substance of the exceptions was; that the said children, after their father's death, went with their mother to an estate of her own at *Burnham Overy*, and there inhabited with her upwards of three months. These exceptions were returned up together with the orders. And it was moved to quash the order of sessions, together with the original order of two justices. The court were inclinable to come at this case if they could, as it seemed to be a determination against law. But by lord *Harwicke* Ch. J. To what purpose should we make a rule to shew cause why this order of sessions should not be quashed? For I do not see, that we can ever make such a rule absolute; because this that is alledged to have been the real state of the case, doth not appear to us to be the fact. And how can we take it for granted, that it was the real fact? To be sure, it is a thing very much to be censured and discommended, when an inferior jurisdiction endeavours to preclude the parties from an opportunity of applying to a superior. But still we must go according to the due course of law. And Mr. justice *Page* said, he never knew an instance, that this court could force the justices, against their will, to state a special case. *Burrow's Settl. Cas.* 64.

And in the case of *Preston upon the bill and Darebury*, E. 9 G. 2. Two justices made an order for removal of the pauper from *Darebury* to *Preston*. And upon appeal to the sessions, they confirmed the said order, generally; not

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not caring to state any special case in their order. A motion was made to quash these orders; which came before the court upon a bill of exceptions, containing a special state of the case. On shewing cause, the single question was, Whether a bill of exceptions would lie in this case to the court of quarter sessions. By lord *Hardwicke* Ch. J. This is a case of great consequence. And there may be very great inconveniencies on either side. It hath been much wished, that a bill of exceptions would lie to the justices at their sessions; because otherwise it may sometimes happen, that they may determine in an arbitrary manner, contrary to the resolutions of the courts of law. For if the justices will not state the facts specially (tho' requested to do so) when the matter is doubtful, this is a very blameable conduct in them, and it is to be wished that it might be avoided. On the other hand, there may be very great inconveniencies arising from the abuse of bills of exceptions. And this matter of the settlement of the poor, which ought to be rendred cheap and speedy, may by such means be rendred dilatory, expensive, and burthensome. And after a full hearing of the arguments on both sides, the court were unanimously of opinion, that a bill of exceptions doth not lie to the quarter sessions. *Burrow's Settl. Cas.* 77.

AFTER determination of the appeal, if the order is reversed, there is a difficulty sometimes in getting the paupers back again to the place from whence they were unlawfully removed. If they will not or are not able to return of themselves, it seemeth that the place where they are cannot lawfully be rid of them but by another order of the justices, setting forth the matter specially. As in the case of *Honiton* and *South Beverton*, *M. 8 W.* Two justices remove a man from *Honiton* in the county of *Devon*, to *South Beverton* in the county of *Somerset*. They appeal to the sessions in *Devon*, where the order is reversed. Now two justices in the county of *Somerset* may by order remove him to *Honiton* again; for it is but an execution of the order of sessions, which could not otherwise be done, because it is out of the jurisdiction of the court of session. *Comb.* 401.

IV. Of the poor rate, and other helps towards their relief.

- i. *Of the poor rate.*
- ii. *Taxing others in aid.*
- iii. *How far parents and children are liable to maintain each other.*

i. *Of the poor rate.*

It is curious to a contemplative person, to investigate by what steps and degrees the compulsory maintenance became established in this kingdom. By a statute made in the 12 R. 2. c. 7. the poor were restrained from wandering abroad, and were required to abide in the towns where they were born, or in other places within the hundred: within which districts they were *allowed* to beg.—By the 22 H. 8. c. 12. the justices were to distribute themselves into several *divisions*; within which divisions respectively they might *license* persons to beg.—By the 27 H. 8. c. 25. the several *hundreds, towns corporate, parishes, or hamlets*, were required to *sustain* the poor with such charitable voluntary alms, as that none of them might of necessity be compelled to go openly in begging; on pain that every person making default should forfeit 20s. a month. And the churchwardens, or other substantial inhabitants, were to make collections for them with boxes on *sundays*, and otherwise by their discretions. And the minister was to take all opportunities to exhort and stir up the people to be liberal and bountiful.—By the 1 Ed. 6. c. 3. houses were to be provided for them by the devotion of good people, and *materials* to set them on *work*: And the minister, after the gospel every *Sunday*, was specially to exhort the parishioners to a liberal contribution.—By the 5 & 6 Ed. 6. c. 2. the collectors of the poor, on a certain *sunday* in every year, immediately after divine service, were to *take down in writing*, what every person was willing to give weekly for the ensuing year; and if any should be obstinate and refuse to give, the minister was gently to exhort him; if he still refused, the minister was to certify such refusal to the *bishop* of the diocese; and the bishop was to send for him, to induce and persuade

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suade him by charitable ways and means, and so according to his discretion to take order for the reformation thereof.

—By the 5 *El. c. 3.* If he stood out against the bishop's exhortation; the bishop was to certify the same to the justices in sessions, and bind him over to appear there: And the justices at the said sessions were again gently to move and persuade him; and finally, if he would not be persuaded, then they were to *assess* him what they thought reasonable towards the relief of the poor; and in case of refusal, were to commit him till paid.—By the 14 *El. c. 5.* power was given to the justices to lay a *general assessment*. And this hath continued ever since. For the statute of the 43 *El. c. 2.* is but a re-enacting of former provisions, with very little alteration; as followeth: *viz.*

1. *The churchwardens and overseers of the poor of every parish, or the greater part of them, shall raise weekly or otherwise (by taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate, appropriations of tithes, coal mines, or saleable underwoods in the said parish) a convenient stock of flax, hemp, wool, thread, iron, and other ware and stuff, to set the poor on work; and also competent sums for the necessary relief of the lame, impotent, old, blind, and such other among them being poor as are not able to work, and also for the putting out poor children apprentices.* 43 *El. c. 2. f. 1.*

The churchwardens and overseers] H. 2 *An. Tawney's case.* The concurrence of the inhabitants in making a rate, is not at all necessary; for by these words the churchwardens and overseers may make one without them. L. *Raym. 1013. 2 Salk. 531.*

Shall raise] And if they refuse to make a rate, the court of king's bench will grant a *mandamus* to compel them. And upon such a *mandamus*, the churchwardens and overseers having returned that they had made a rate, and that the rate had been quashed on the appeal, and the sessions had ordered them to make a new rate, which they had already done and collected the money thereon, this was held to be a good return. K. and *Wincanton.*

But the court will not grant a *mandamus* to make an equal rate; because it is to be presumed the overseers will do justice, and if they do not, there is a proper remedy by appeal to the sessions. (K. and *Barnstaple.*) 2 *Barnard. 457.*

Weekly

Weekly or otherwise by taxation] T. 19 G. 2. K. and the churchwardens of *Weably*. The court refused to grant a *mandamus*, directing to insert particular persons in the poor rate, upon affidavits of their sufficiency, and being left out to prevent their having votes for parliament men; for that the remedy was by appeal, and this court never went further, than to oblige the making the rate, without meddling with the question, who is to be put in or left out; of which the parish officers are the proper judges, subject to an appeal. *Str.* 1259.

By taxation] By this statute the taxation ought to be equal; and therefore ought to be continually altered as circumstances alter. 2 *Salk.* 526.

M. 12 W. K. and *Audly*. A rate was agreed on in 1665, by the inhabitants of *Audly*, which had been followed ever since till the last year, when a new rate was made. On appeal to the sessions, the new rate was quashed, and the old one ordered to stand. By *Holt Ch. J.* The old rate, however just at first, may be unequal now, and therefore the justices cannot make a standing rate, for lands may be improved. 2 *Salk.* 526.

H. 2 G. K. and *Clerkenwell*. An order was quashed, which was made to confirm a poor rate, which rate was made according to the land tax: Objected, that this taxation was not equal, because the personal estate in the publick funds is not chargeable to the land tax, but it is to the poor: And by the whole court this rate for that reason was set aside. *Fol.* 12.

The form of which rate or taxation may be thus:

AN assessment for the necessary relief of the poor, and for the other purposes in the several acts of parliament mentioned relating to the poor, for the parish of _____ in the county of _____ made and assessed the _____ day of _____ being the first rate at 6 d. in the pound for the present year—

				l.	s.	d.
A. B.	—	—	—	0	3	0
C. D.	—	—	—	0	0	9
E. F.	—	—	—	0	2	6

And so forth.

Assessors, A. B. }
C. D. } Churchwardens.
E. F. }
G. H. } Overseers of the poor.

Of every inhabitant] Where persons shall come into, or occupy any premises, out of which any other person assessed shall be removed, or which at the time of making such rate was unoccupied, then every person so removing from, or coming into, or occupying the same, shall be liable to pay such rate, in proportion to the time that such person occupied the same respectively, under the like penalty of distress, as if such person so removing had not removed, or the person coming in or occupying had been originally assessed in such rate; which proportion, in case of dispute, shall be ascertained by two justices. 17 G. 2. c. 38. s. 12.

Of every inhabitant, parson, vicar, and other] Under these words seems to be included the taxation of personal estates; and real estates are charged by the words next after.

And when goods or personal estates are rated, it ought to be done in the same proportion as lands are taxed, namely, every 100 l. at the rate of 5 l. a year, or other reasonable interest. *Read Poor.*

Every inhabitant—and every occupier of lands, &c.] A person who hath lands in his occupation, and a stock of goods and wares besides, as a draper, grocer, and the like, may be taxed for both, but not for such stock or goods with which he uses to manure his lands. *Read Poor. L. Raym. 1280.*

Stock in trade, and the house wherein the stock is kept, may be both rated towards the relief of the poor, and this shall not be a double tax; but if the land be taxed, the stock upon it cannot be taxed also, for this will be double. *Vin. Poor. E. 8.*

On a motion to confirm a tax laid by the justices on the toll of a corporation, *Hale Ch. J.* said, that on a reference to him by both parties, he was of opinion that the toll was not exempted, but chargeable, though part of it was to maintain the mayor. 3 *Keb. 540.*

It hath been resolved, that *ground rents* are liable to the poor rate. *Comb. 62.*

The overseer of *Stoke Nayland* in *Suffolk* made a rate, in which he charged the *quit rents* of several manors within the parish; which rate the justices refused to sign, because the quit rents ought not to be taxed: Whereupon the overseer, on application to the king's bench, obtained a rule to enforce the justices to sign it; which was strongly opposed, because no instance could be given that ever the

quit rents were charged: but the court ordered the rate to be signed, and a warrant to distrain; so that if any person thought himself aggrieved, he might replevy, and the matter in law be brought in question. *Carib. 14. M. 3 Ja. 2.*

In another like case, *Eyre J.* said, that a quit rent is not taxable to the poor, for the tax ought to be laid on the occupier: But *Holt Ch. J.* said, it was otherwise ruled in the case of one *Williams of Suffolk. Comb. 264. T. 6 W.*

Finally, in the case of *K. and Vandewall, E. 33 G. 2.* This point came fully to be considered. *Samuel Vandewall*, esquire, was rated to the poor, for the quit rents, and other casual profits of his manor, arising from escheats, heriots, fines, reliefs, and the like: And the sessions upon appeal confirm the rate. And the order of sessions being removed by certiorari, lord *Mansfield* delivered the resolution of the court, that they are not rateable to the poor; which he said was so clear, that there was no need to enter into reasonings about it: And so far as appeared to the court, such rents and profits had never been attempted to be rated before; and there is no colour for the attempt now, after more than a century and an half since the making of the act upon which it is grounded. *Burrow, Mansfield. 991.*

Occupier] The farmer or occupier shall pay this tax, and not the landlord, who is never to be taxed for his rent; for then the landlord would pay twice: but if he be possessed of a sum of money, or other personal estate, he may be taxed for that. *L. Raym. 1280. Dalt. 165.*

And the reason why the occupier is to be so charged is, that the poor rate is not a charge upon the land, but upon the occupier in respect of the land. *Fitz-Gib. 297. Case and Stephens.*

M. 11 G. Theed and Starkey. The lessor covenants with the lessee, to pay all taxes on the lands demised. The lessee brought an action of covenant, and assigned for breach the not paying of the rates to the church and poor. Upon demurrer it was objected, that those rates are personal charges, and not on the land: And for that reason the defendant had judgment. *8 Mod. 314.*

Occupier of lands, houses] *E. 1 Ann.* By *Holt Ch. J.* Hospital lands are chargeable to the poor, as well as others; for no man, by appropriating his lands to an hospital, can discharge or exempt them from taxes to which they

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they were subject before, and throw a greater burthen upon his neighbours. 2 *Salk.* 527.

But with respect to the hospital itself, it was determined, in the case of *St. Luke's* hospital for lunatics, *M. 1 G. 3.* that the said hospital is so, excepting only those parts of them which are inhabited by the officers belonging to the hospital, as the chaplain, physician, and the like, in *Chelsea* hospital; and these apartments are to be rated as single tenements, of which the said officers are the occupiers. The reason why the apartments of the sick or mad persons are not to be rated is, that there are no persons who can be said to be the occupiers of them. For it would be absurd to call the poor objects so with respect to this purpose; and the lessees of the hospital in trust for the charitable purposes to which it is applied, cannot with any propriety be considered as the occupiers of it; nor, lastly, can the servants of the hospital, who attend there for their livelihood: And no other persons (said lord *Mansfield* Ch. J.) can with any shadow of reason be considered as the occupiers thereof. *Burrow; Mansfield.* 1053.

Tithes] *H. 4 G. K. and Turner.* The defendant being assessed towards the poor rate for his tithes as vicar, appealed to the sessions, where he is absolutely discharged. But by the court, As vicar he is chargeable by the 43 *El.* and the sessions hath only power to moderate, but not discharge. And the order of sessions was quashed. *Str.* 77.

And a person who lets each parishioner his own tithes, is properly the occupier, and ought to be rated. *Vin.* Poor. F. 4.

But if a parson makes a lease of the tithes to one person, who afterwards lets the same to each parishioner, there the lessee is the occupier, and ought to be taxed. So if a man has a wood, or standing corn, and sells the same standing; the vender is the occupier, and shall be taxed. 8 *Mod.* 61.

T. 8 G. K. and the inhabitants of *Lambeth.* The parson lets his tithes to farm; and the farmer agrees with the tenant of the land, that in consideration of his paying so much, he shall retain the tithe, and gather in the whole crop without dividing: and which of the two is chargeable to the poor rate, as occupier of the tithes, was the question. And the sessions discharge the lessee of the parson, and tax the tenant of the land. But by the court,

The order must be quashed. The farmer of the tithes is *prima facie* liable to the poor rate, and therefore unless he can throw that charge over upon another, the tax must be made upon him. The tenant of the land in this case can never be said to be the occupier of the tithes; for he is either a person who buys the tithes, or else he is to be taken as only excused from paying any; and no body can say, but that though the parson thinks fit to excuse a parishioner, he will still remain in point of law the occupier of the tithes. This agreement being only by parol, cannot enure as an under lease of a thing that lies only in grant. Suppose it was the case of underwoods, which are sold standing, and the vendee grubs them up; can it be imagined, that makes him the occupier; or suppose the tenant sells the whole crop standing, will that make him less the occupier of the land? If it should, it would be impossible for the officers of the parish to know whom to charge. We must take this tenant of the land to be like any other buyer of the tithes, since he has no more title to them than any stranger whatsoever; and when the parson or his farmer receives a sum of money in lieu of tithe, that is in law a receipt of the tithe; with this only difference, that it is not tithe in kind. In the case of a composition (as this is) or a *modus*, it was never thought but that the parson was chargeable as occupier of the tithe: therefore there being no colour to charge the tenant of the land, the order of sessions must be quashed. *Str.* 525.

Coal mines or saleable underwoods] That is, proportioning them to an annual benefit. *Dalt.* 165.

In the case of the governor and company for smelting down lead, against *Richardson* and others, *M.* 3 G. 3. a point was reserved before Mr. Justice *Bathurst* at *Carlisle* assizes 1761, which was thus: The defendant had distrained for a poor rate assessed on the occupiers of the lead mines lying in the parish of *Alston*; upon which they brought this action. The case states, that the plaintiffs were lessees from *Greenwich* hospital; that they worked the mine, but did not live in the parish of *Alston*; that the profits of the hospital that year amounted to 1900*l.* but those to the plaintiffs the lessees, were quite precarious and uncertain, and that some years they gained nothing; that no lead mines had ever been assessed, except in an instance or two since making this distress.—By lord *Mansfield* chief justice: The question is no more than

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than this; Whether a lessee of lead mines, whereon no rent is reserved, other than a certain proportion of the oar to be raised, is rateable to the poor under the 43 *Eliz.* Now nothing can be clearer, than that these mines are not within the *letter* of the statute; for the legislature could never intend by the word *coal* mines to comprehend other species of mines. If they had meant to include them, they would either have enumerated them, or used the general word *mines*. So that the expression *coal mines* expressly excludes mines of any other sort, as much as if they had been excepted. And there was a very good ground of exempting them; as from the nature of working them they are liable to more hazard and expence than coal mines are. And at that time, all copper, lead, and tin mines, in *Derbyshire*, *Cornwall*, and *Mendip* in *Somersetshire* (which are the only counties where works of that kind were then established) were governed by particular laws; whereby any stranger conforming to the ceremonies thereby required, was at liberty to work those mines, without any reward to the owner of the soil. And as all these undertakings were attended with infinite hazard and expence, and often ruined the projectors; it is no improbable conjecture, that the legislature meant for this reason, and in order to encourage them to proceed in undertakings of this publick utility, to exempt them from any other burden or imposition than those that the miners law had imposed. Indeed if a man has taken a lease of land, with privilege to dig for mines, he may be rated for the land: But that is not the present case. And where the legislature have not imposed a tax, this court cannot do it by construction. For example, the fees of a physician or lawyer are not made liable by the act, and therefore cannot be rated. Upon the whole, as here might be a very good reason for not making these mines liable, which is fortified by usage, and they are not within the letter of the act, I am clear they are not rateable.—Mr. justice *Denison* was of the same opinion.—By Mr. Justice *Wilmot*: There is a material difference between coals and other mineral works. Coals are easily found; but a vast deal of time and money is often spent in discovering other mines. The legislature therefore considered, how dangerous it would be to discourage these kinds of adventurers, by subjecting them to a tax. Another thing which convinces me, that the legislature meant only to include coal mines is, that in the statute of 31 *El.* 7. concerning cottages, they have

used the words *coal mines and all other mineral works*; which plainly shews, they never understood that coal mines would comprehend other sorts of mines.

In the said parish] A man having lands in other parishes than where he lives, the same being in lease or not in lease, he is to be taxed in the parish where he lives, according to his visible estate there, and not for his lands or rent in another parish. *Dalt.* 165.

For the taxation ought to be made upon the inhabitants and occupiers of lands within the parish, according to the visible estates and possessions, real and personal, which they have and enjoy within the parish, without regard to any estate which they have elsewhere. 2 *Bulstr.* 354.

And by the 17 G. 2. c. 37. Where there shall be any dispute in what parish or place improved wastes, and drained and improved marsh lands lie, and ought to be rated; the occupiers of such lands, or houses built thereon, tithes arising therefrom, mines therein, and saleable underwoods, shall be rated to the relief of the poor, and to all other parish rates, within such parish and place which lies nearest to such lands; and if on application to the officers of such parish or place to have the same assessed, any dispute shall arise, the justices at the next sessions after such application made, and after notice given to the officers of the several parishes and places adjoining to such lands, and to all others interested therein, may hear and determine the same on the appeal of any person interested, and may cause the same to be equally assessed, whose determination therein shall be final. But this shall not determine the boundaries of any parish or place, other than for the purpose of rating such lands to the relief of the poor, and other parochial rates. s. 1, 2.

Allowance of
the rate by the
justices.

2. By the aforesaid statute of the 43 El. the said rate and taxation shall be made, *with the consent of two justices, one whereof is of the quorum, dwelling in or near the parish or division.* s. 1:

And this consent is usually given, by the justices signing the same, with their allowance thereupon, thus:

WE two of his majesty's justices of the peace in and for the said county, one whereof is of the quorum, do consent unto and allow of this assessment: *Witness our hands*
the _____ day of _____

J. P.
K. P.

But

But this consent is to be understood of two justices out of sessions; for the sessions have no original power to order an assessment to be made, but only if it come before them by way of appeal: for in such case the party would be deprived of the benefit of appealing. *L. Raym.* 798.

And if the justices refuse to sign and allow the rate, the court of king's bench will grant *mandamus* to compel them.

M. 7 G. K. and the justices of *Dorchester*. A *mandamus* issued to the justices to sign a poor rate made by the churchwardens and overseers. Before the return a motion was made to supersede it, for several objections to the fairness of the rate; and that this would be speedier and better for the poor, than to reserve the debate of them for a formal return. But by the court, The two justices are necessary to sign the rate only by way of form; for it is the churchwardens and overseers that have the power of making it; and whether it be a fair rate or not, is proper for the jurisdiction of the sessions, and was never intended for our examination. The *supersedeas* being denied, the justices returned, that they could not allow the rate, it not being a just and proper rate: and the court having before given their opinion of this upon the motion, they resented this usage so far, that they quashed the return, and ordered an attachment against the justices, who thereupon submitted, and returned that they had allowed the rate. *Str.* 393.

3. The churchwardens and overseers shall cause publick notice to be given in the church, of every rate for relief of the poor, allowed by the justices, the next Sunday after such allowance; and no rate shall be reputed sufficient to be collected, till after such notice given. 17 G. 2. c. 3. s. 1.

4. And they shall permit any inhabitant to inspect such rate at all seasonable times, paying 1 s. and shall give copies on demand, being paid 6 d. for every 24 names. 17 G. 2. c. 3. s. 2.

And if any churchwarden or overseer shall not permit any inhabitant to inspect, or refuse to give copies as aforesaid, he shall forfeit 20 l. to the party grieved. s. 3.

5. If any person shall be aggrieved by any assessment, or shall have any material objection to any person's being put in or left out of such assessment, or to the sum charged on any person or persons therein; he may, giving reasonable notice to the churchwardens or overseers, appeal to the next sessions; but if reasonable notice be not given, then they shall adjourn the appeal to the next quarter sessions after. 17 G. 2. c. 38. s. 4.

And on all appeals from rates, the justices shall amend the same, in such manner only as shall be necessary for giving relief, without altering such rates, with respect to other persons mentioned in the same; but if upon an appeal from the whole rate, it shall be found necessary to set aside the same, then they shall order a new rate to be made. *id.* f. 6.

And the court may award costs to either party, as in cases of settlement by the 8 & 9 *W.* *id.* f. 4.

Which shall be recovered, according to the said statute, by indictment, if the party lives within the jurisdiction of the justices; otherwise, by distress, or commitment where no distress is to be had.

After appeal,
rates to be en-
tered in a book.

6. True copies of the rates shall be entered in a book, by the churchwardens and overseers, within 14 days after all appeals from such rates are determined; and they shall attest the same, by putting their names thereto; and all such books shall be kept by the churchwardens and overseers for the time being, whereto all persons liable to be assessed may freely resort, and shall be delivered over from time to time, to the new churchwardens and overseers, as soon as they enter into their offices, to be preserved and produced at the sessions when any appeal is to be heard. 17 G. 2. c. 38. f. 13.

Rate to be levied
by distress.

7. It shall be lawful as well for the present as subsequent churchwardens and overseers, or any of them, by warrant from any two such justices, one whereof is of the quorum, to levy the said sums, and all arrearages, of every one that shall refuse to contribute according as they shall be assessed, by distress and sale. 43 El. c. 2. f. 4.

And by the 17 G. 2. c. 38. The goods of any person assessed and refusing to pay, may be levied by warrant of distress, in any part of the county; and if sufficient distress cannot be found within the county, on oath made thereof before a justice of any other county (which oath shall be certified in the warrant) the goods may be levied in such other county or precinct, by virtue of such warrant and certificate; and if any person shall be aggrieved by such distress, he may appeal to the next sessions for the county or precinct where the assessment was made. f. 7.

But by *Holt Ch. J.* in the case of *Tracy and Talbot, T. 3 An.* The rate cannot be distrained for by virtue of a general warrant made before the rate; but there ought to be a special warrant on purpose. 2 *Salk.* 532. That is to say, the non-seafance of the party shall not be left to the judgment of the officer, who may out of private resentment sell his neighbour's goods without sufficient cause; but oath of the refusal must be made before the justices. And it is reasonable that the party should be heard in his

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defence; for he may shew cause variously why a distress should not be granted; as, that the rate was not regularly allowed, or was not published in the church, or that he had given notice of appeal, or that no demand or refusal had been made, and the like.

The form of the summons in which case may be this:

Westmorland. { To A. O. of the parish of——in the
said county, yeoman.

WE whose names are hereunto set and seals affixed, two of his majesty's justices of the peace in and for the said county, one whereof is of the quorum, do hereby summon you personally to appear before us at the house of——in——in the said county, on——the——day of——at the hour of——in the forenoon of the same day, to shew cause why you refuse to pay the rate or assessment made for the relief of the poor of the said parish for this present year; otherwise we shall proceed as if you had appeared. Given under our hands and seals the——day of——in the year of our lord——.

And then the warrant of distress thereupon may be thus:

Westmorland. { To the churchwardens and overseers of
the poor of the parish of——in the
said county.

WHEREAS in and by a rate and assessment made, assessed, allowed, and published, according to the statutes in that case made and provided, A. O. an inhabitant and occupier of an house in the said parish of——was duly rated and assessed for and towards the necessary relief of the poor of the said parish for this present year the sum of 3s. And whereas it duly appeareth unto us, two of his majesty's justices of the peace in and for the said county, one whereof is of the quorum, as well upon the oath of O. P. overseer of the poor of the said parish, as otherwise, that the said sum of 3s. hath been lawfully demanded of the said A. O. and that the said A. O. hath refused and doth refuse to pay the same; And whereas the said A. O. having appeared before us in pursuance of our summons for that purpose, hath not shewed to us any sufficient cause why the same should not be paid: [Or, And whereas it hath been duly proved to us upon oath, that the said A. O. hath been duly summoeneat • appear before us the said justices, to shew cause

cause why the same should not be paid, but be the said A. O. hath neglected to appear according to such summons; and hath not shewed to us any sufficient cause why the same should not be paid:] These are therefore to require you forthwith to make distrefs of the goods and chattels of him the said A. O. And if within the space of [four] days next after such distrefs by you taken, the said sum, together with reasonable charges of taking and keeping the said distrefs, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you detain the said sum of ——— and also your reasonable charges of taking, keeping, and selling the said distrefs; rendring to him the said A. O. the overplus on demand. And if no such distrefs can be made, that then you certify the same unto us, to the end that such further proceedings may be had therein, as to law doth appertain. Given under our hands and seals this ——— day of ———.

And where any distrefs shall be made, for money justly due for relief of the poor, the distrefs itself shall not be deemed unlawful, nor the parties making it be deemed trespassers, for any defect or want of form in the warrant for the appointment of overseers, or in the rate, or in the warrant of distrefs thereupon; nor shall the parties distraining be deemed trespassers *ab initio*, on account of any irregularity, which shall be afterwards done by the parties distraining; but the party aggrieved by such irregularity, may recover full satisfaction for the special damage, and no more, in an action of trespass, or on the case. But where the plaintiff shall recover in such action, he shall be paid his full costs. But no plaintiff shall recover in any action, for any such irregularity, if tender of amends hath been made by the party distraining, before such action brought. 17 G. 2. c. 38. s. 8, 9, 10.

Commitment for want of distrefs. 8. *In defect of such distrefs, it shall be lawful for two such justices to commit such person to the common gaol, there to remain without bail or mainprize, until payment of the same.* 43 El. c. 2. s. 4.

Arrears to be levied by the succeeding overseers. 9. *And if any person shall neglect to pay to such overseers, the succeeding overseers shall levy the arrears, and shall reimburse their predecessors the sums which are allowed to be due to them in their accounts.* 17 G. 2. c. 38. s. 11.

In case a person charged shall die before payment (which is a thing that must needs very frequently happen), it hath been doubted how far the deceased's goods in the hands of the executor or administrator are liable to answer

answer the same. As in the case of *Stevens* against *Evans* and others, E. 1 G. 3. *William Vesey* was assessed to the poor rate, and died intestate. Administration of his goods was granted to *John Stephens* the plaintiff. After which two justices executed a warrant, in which warrant the said assessment was recited, and in the said warrant it was also recited that it appeared to the justices on the oath of the late overseer, that the sum assessed had been demanded of the said *William Vesey*, and (since his decease) of his widow and representative *Susanna Vesey*, and that they refused to pay the same; therefore the justices require the officers to distrain the goods and chattels of the late *William Vesey*. An action of trover was brought by *Stephens* the administrator, and a special case was stated for the opinion of the court; and the question as stated was, Whether the distraining and taking and selling the cattle which were the goods of *William Vesey*, in the hands of the plaintiff his administrator, by virtue of the said warrant, was lawful, or not.—Mr. Norton, on behalf of the plaintiff, argued that it was not lawful, and that an action of trover is maintainable against the parish officers for taking them. And he made three objections: 1. It was a bad rate; being made to reimburse an overseer, for the overseer was not obliged to advance the money without a previous rate; and he may reimburse himself out of the next, made in his own time: And it was made for half a year, whereas it ought not to have been for longer than a month. 2. Here was no refusal by the representative to pay the money. And there can be no distress, without a previous demand and refusal. The refusal was made by *Vesey* who is dead; and by the widow, who was not in fact, tho' she is in the warrant stated to be, his representative. 3. Supposing the rate and warrant to be good; yet the goods of *Vesey* are not distrainable, in the hands of his personal representative, for a rate made upon *Vesey* himself. There is no instance of it, nor any case to support this; therefore it ought not to be supported. Nor is there any necessity for it; for the poor cannot suffer by the non-payment of this money; there are other provisions for raising the money. This is a *casus omisus*. The acts of parliament give no such power to the justices, as to grant such a warrant; and nothing can be intended in favour of their jurisdiction. It is not the *thing* that is rated, but only the *person*, the occupier; and the statute gives the means of compelling it. The refusal to contribute

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according to the assessment is treated as an offence, and the offender is to be sent to gaol. But the executor or administrator is not an offender. It is a personal charge. An overseer could not bring an action for it, even against the person charged. He must pursue the particular remedy appointed by the act. And if so, the court will never extend the remedy, against a representative. If an administrator should pay this rent, he might be guilty of a *devastavit*. And the compulsion by distress will not alter the case, or be an excuse for a *devastavit*.——

Mr. Bishop, on the other side, for the justices and parish officers: The court will not now enter into any objection to the *rate*. The only questions therefore are, as to the *warrant*, and as to the assets being distrainable in the hands of the *representative*. As to the demand of the money upon *Vesey* himself, it was made upon him, and is so stated. And as to the demand upon the representative, the end and intention of this special case was to settle the material point, the real question, whether the goods of the person rated are or are not distrainable in the hands of the representative. The practice is on our side, that they are. It is no answer to say that other people are liable to pay, if the person rated does not: The question is, Whether the representative of the person rated is or is not liable. The authority to make this warrant, and to make the distress in obedience to it, is founded upon the statute of the 43 *El.* which gives the remedy by distress, on refusal to pay. The demand of the money is to be made, and in the present case was actually made, upon the person assessed: And that made it a debt from him. There was no need of a demand upon the representative. The assets were already become liable, and remained so in his hands. As to the danger of a *devastavit*; a representative could not be guilty of a *devastavit*, even by paying a simple contract debt before a bond debt, if he had no notice of the bond debt: And the distress made upon him would be a justification to him for paying it under the compulsion of such distress. I do not say, that the executor or administrator could be sent to gaol, for non-payment of this debt; but yet the assets in his hands are distrainable, as the proper fund out of which it is to be paid; especially as no action would lie for it (as Mr. Norton agrees.)——Mr. Norton, in reply: No answer at all has been given to my objection to the *rate* itself. And I say, that even if the administrator were admitted to be liable to pay, yet still there

there ought to have been a previous demand upon him. No such practice as what Mr. *Bishop* speaks of, is stated in the case; and therefore the court will intend that there is none such. And I believe there is none. I never heard of it before. I take it to be directly the other way. And at all events, the poor cannot suffer; for there are other persons who must make up the deficiency, in case this man do not pay. This is scarce a solvent estate; because the widow has renounced administration, and it is granted to a creditor. This is a charge upon the person, which dies with him: Like costs payable by one who dies; (for which a bill in Chancery cannot be revived: And so in this court, upon informations, they are gone by the death of the party.) And the administrator cannot possibly know, in what course of administration to pay this rate. If an executor or administrator pays a debt of a lower nature, at that time knowing of others of an higher, it is undoubtedly a *devastavit*. And here there may be debts of an higher nature, which the administrator may know of. And if he is obliged to pay it under compulsion, he ought to pay it without compulsion. It is a charge imposed; not a debt. The case was left * open upon its being stated at the trial, to all or any other objections that could be made upon the face of it. There were other debts besides this.——By Mr. justice *Denison*: That makes no difference. The question is stated particularly upon this case; and is confined to the levying the money upon the representative of the person charged. I should think, the event must have often happened, in fact and experience. The practice is not stated. But however, the question is, what the law is, and not what the practice is. It is a rule, that upon a new statute which prescribes a particular remedy, no remedy can be taken, but the particular remedy prescribed by the statute. Therefore clearly, no action of debt will lie for a poor rate. The remedy given by the act of the 43 *El.* must be considered with analogy to other like cases. This statute considers the person rated and refusing to pay, as an offender. And it gives no authority but to distrain the goods of the offender. Therefore no goods are liable to be distrained, by the words of this act, but the goods of the offender himself. I never apprehended, that

* Mr. *Bishop* denied this.

the goods of the person assessed to the rate, can be charged in the hands of the representative. And therefore (as at present advised) I should think that this action will lie for taking them. I agree that this is in the nature of an execution: But yet it is personal; and I do not know that it is a *lien* upon the assets.——Mr. justice *Wil-*
mot concurred; and said he had no doubt about it. He thought the intention of the special case, which states a particular question, appeared to be, to submit this question only to the court. As to the objections that have been made to the *rate*; the first is of no great importance: For tho' you cannot make a rate to reimburse overseers; yet the overseer may immediately, whilst in office, reimburse himself out of the next money raised for the rate. As to the second, he said, he believed that whatever the law might be, the practice was, not to make these rates monthly. On the merits: It is not stated in the *case*, that a demand was made even upon *Vesey* (the person assessed), and that he refused payment; tho' it is so recited in the *warrant*. But that is not material. For I have not the least doubt, but that the representative ought to have been convened before the justices, and asked, what he had to say why he should not pay the rate assessed upon *Vesey* his intestate. This case seems to be like a *scire facias* upon a judgment: upon which, execution cannot be sued out against the representatives, without asking them what they have to alledge why it should not be taken out. At the time of the teste of the warrant, they were the goods and chattels of the representative. If the teste had been prior to the death, they would have been the goods and chattels of the deceased. But if tested after his death, they are not his goods and chattels, but the goods and chattels of the representative. Therefore if the money had been demanded of the representative, I should have had great doubt, whether this warrant and distress would not have been good. For I cannot think that by the death of the person charged with this rate, the assessment before made upon him and demanded of him would have been quite gone and lost to the parish, and could not have been any way come at. For tho' it may be a charge upon the person, yet it is a charge upon him in respect of the thing occupied. And tho' he be called an offender, if he refuse to pay it; yet he can be no otherwise considered as an offender, than every other debtor who refuses or neglects to pay his debts, and thereby renders

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renders his person and goods liable to be taken in execution, is so far treated as an offender, till he shall comply with the judgment awarded. And in experience I know it to be the case, that these payments by executors or administrators are often allowed to go in discharge of the assets of the testator or intestate; tho' I do not remember that it has been settled in what course of administration. Indeed it might be of too much consequence, to put it into the power of justices of the peace to determine upon the administration of assets, as to the course in which they are to be administered. In a case of *Wallis and Hewit*, at *Guildhall*, at the sittings after *Hilary* term, 5 G. 2. before lord chief justice *Eyre*, in an action of trespass, two aldermen of *London* had made a warrant to distrain a man for a poor rate. The man died intestate. But before that, there had been a demand made upon him, and refused by him, and a warrant of distress granted upon his refusal. And then he died. *Eyre* Ch. J. held, that a distress could not be made after his death; or if it could, yet the representative ought to have been summoned: And he held the property to be changed. A case was made for the opinion of the court of common pleas: But I could not hear what became of it: Lord chief justice *Eyre* was a great lawyer. It would be strange, that a distress should be taken upon a man's goods, without hearing him. And it would make great confusion in the administration of assets. He may have paid or retained judgment debts, prior to this distress for the rate.——Mr. *Gould* was retained to take notes for the defendants. But he said, that if Mr. *Norton* insisted upon the want of a demand from the representative, he could not pretend to maintain the case on the part of the defendants.——Mr. justice *Denison* and Mr. justice *Wilmot* said that this was an essential circumstance. And by the court unanimously, judgment was given for the plaintiff the administrator. *Burrow, Mansfield. 1152.*

[Note, The arguments in this case are here recited somewhat at large, in order to bring in as much light as may be upon this subject; especially as no other case hath occurred, wherein this point hath been considered. And this particular case, as appears, was determined on its own peculiar circumstances, namely, for want of summoning the administrator. So that the principal point seemeth yet to remain undetermined; which includes in

it these particulars: 1. Where the warrant of distress is made out during the lifetime of the person assessed, whether the officers can follow the goods into the hands of the administrator or any other, without taking notice of any person as executor or administrator? 2. Where the warrant of distress is not made out till after the death of the person assessed, whether on summoning the administrator, and refusal by him, the officers can distrain the goods in the hands of such administrator? 3. Whether the administrator himself may be assessed in a succeeding rate, as for arrears; and on the assessment being confirmed at the sessions upon his appeal, whether distress may be made as of his own goods, and whether for defect of distress he may be committed? 4. In what course of administration such assessment shall be estimated? And if the administrator shall plead before the justices debts of an higher nature, or insufficiency of assets; whether and how far the justices are to take notice of such plea, and how or in what manner they shall determine the same?]

Certiorari.

10. *E. 5 G. K. and Uttoxeter.* Upon great debate, and search after precedents, it was held, that a *certiorari* would not lie to remove the poor rate itself, the remedy being to appeal; or by action when a distress is taken, which will answer all the ends of justice in coming at an equal rate; whereas if the rate itself should be required to be sent up, great inconveniencies and delays would follow. *Str. 932. Cases of S. 317.*

E. 7 G. 2. K. and the justices of Salop. The true objection against a *certiorari* is, that if rates were removeable, the poor might be starved whilst the rates were depending; and therefore the court, from the great inconvenience that would attend the removal of rates, have refused to do it. *Seff. C. V. 1. 201. Str. 975.*

ii. Taxing others in aid.**Hundred contributory,**

1. *If the said justices do perceive, that the inhabitants of any parish are not able to levy among themselves sufficient sums for the purposes aforesaid, then the said two justices (1 Q.) shall tax, rate, and assess as aforesaid any other of other parishes, or out of any parish within the hundred, to pay such sums to the churchwardens and overseers of the said poor parish,*
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for the said purposes, as the said justices shall think fit. 43 El. c. 2. f. 3.

That the inhabitants of any parish are not able] H. 8 An. Order of two justices: The case was thus: There were two villis in one parish, and the justices recite in their order, that one of the villis was very rich, and the other very poor; and further, that the vill which was rich, did not pay half so much to the poor, as the poor vill did. Objected, 1. One vill ought not to contribute to another, because the statute mentions parishes only. 2. The reason given for charging the rich vill to contribute to the poor vill is uncertain; viz. because they do not pay half so much as the poor vill does, without shewing that either vill pays any thing to the poor. By the court; As to the first objection, surely this will come within the equity of the statute, though the statute only makes mention of parishes; and it is highly reasonable, that one vill should contribute to another in the same parish. But this order must be quashed on the second objection, for the uncertainty. *Foley* 25.

Then the said two justices] T. 2 J. 2. K. and Griesly. The sessions rated the adjacent parishes: Quashed; because the statute appoints it to be done by the two justices, and hereby they prevent an appeal. *Cases of S.* 259.

The said two justices shall tax, rate, and assess] T. 12 G. 2. St. Mary's and St. Peter and Paul's in Marlborough. Two justices order the churchwardens and overseers of St. Peter and Paul's to assess, raise, and levy a sum towards the maintenance of the poor of St. Mary's. But the order was quashed by the court; because the justices had delegated their power to the churchwardens and overseers, whereas by the statute they themselves are to make the rate on all, or on particular persons. *Str.* 1114.

In this case, a mandamus was moved for to the justices, to make a rate for the support of the poor of the parish of St. Mary's; which was opposed, because the parish officers ought to make the rate, and the justices are only to sign it. To which it was answered, that this motion was grounded on this clause of the statute; and thereupon a mandamus was granted, directed to the justices; and as this is a matter of right, they ought to make a return. *Vin. Poor. vol. 16. p. 416.*

And the justices are to make the taxation, and leave it to the churchwardens and overseers to levy it. 2 Salk. 480.

Any other of other parishes] *M. 32 C. 2.* Resolved, that the justices may impose the charge upon any of the inhabitants of the neighbouring parishes, and are not obliged to put a general tax upon the whole parish. *Comb. 309. 1 Ventr. 350.*

T. 12 G. K. and Boroughfen. There was a taxation of several persons in a parish: Objected, that it should be of all the persons in a particular place or parish. The court thought it unreasonable, that several persons in a parish should be charged, and not all, but that the words of the act are very strong; and did not quash the order for this objection. *Foley 29.*

Within the hundred] *T. 9 An. Boroughfen and St. John's.* Motion to quash an order of two justices; for that it doth not appear upon the order, that the parish which is charged to aid the parish that is not able to maintain its own poor, is within the same hundred. And quashed by the whole court. *Foley 27.*

H. 8 An. Motion to quash an order of two justices, which was made to assess the parishes of *St. Stephen and St. Mary Magdalen in Norwich*, in aid of the parish of *St. Benedict*, which was not able to maintain its own poor. Objection. These parishes are not in the same hundred; it is in *Norwich* where there is no hundred, so the justices have no jurisdiction. And by *Holt Ch. J.* The order must be quashed. *Foley 31.*

E. 31 G. 2. K. and the tything of Milland. Two justices tax the inhabitants of the tything of *Milland*, in aid of the parish of *St. Peter's Cheesehill*, in the same county. The sessions confirm the order, setting forth, that the tything of *Milland*, and the parish of *St. Peter's Cheesehill*, both lie in the same liberty of the *soke* where the said parish lies. On referring it back to the sessions to be more particularly stated, it appeared (substantially) to be a hundred, tho' called by another name. And the court held, they were not restrained to the particular word *hundred*, but it is sufficient if it be signified by any word equivalent. And the orders were affirmed. *Burrow, Mansfield 576.*

As the said justices shall think fit] *E. 12 G. K. and St. Mary's in Marlborough.* An order was made for a neighbouring parish to contribute, so long as we the said justices shall

shall think fit. But by the court, It must be quashed: for the discretion that is left in the justices, is as to the *quantum*, and not as to the duration of the contribution. *Sir. 700.*

M. 6 W. K. and Knightly. A sum in gross was taxed upon a neighbouring parish, for a whole year; which was objected to as unreasonable, because their ability may change: nevertheless the order was confirmed. *Comb. 309.*

T. 6 G. K. and Telfcombe. By the court, The order for the contributory parish to make a rate at 6 d. in the pound is ill for incertainty: it should have been, to raise such a sum certain. *Quashed. Sir. 314.*

T. 12 G. 2. Case of the parish of *St. Peter and Paul* in *Marlborough.* Two justices, reciting the inability of the parish of *St. Mary* to maintain its own poor, order the parish of *St. Peter and Paul* to contribute 60 l. for the maintenance of the poor of the other parish. And objection being made to their ordering such a gross sum, the court held it in that respect to be well. *Sir. 1114.*

2. *And if the said hundred shall not be thought by the said County justices able and fit to relieve the said several parishes not able to provide for themselves, as aforesaid, then the justices at their general quarter sessions shall rate and assess as aforesaid, any other of other parishes; or out of any parish within the county.* *43 El. c. 2. s. 3.*

T. 3 G. K. and Percivall. Order of sessions, reciting that the parish is not able to maintain its own poor, nor any other parish within the hundred to contribute, therefore the justices at the sessions tax other parishes in another hundred within the same county. It was moved to quash it, and insisted that the statute gives no authority to the sessions to charge people out of the hundred, till two justices have inquired whether any parish in the hundred can contribute: The first application to be to two justices, and the second to the sessions. *Parker Ch. J.* I do not see, to what purpose it would be, for the two justices to make an order, only to adjudge that no parish within the hundred is able to contribute. We will presume the sessions is satisfied of that, and if the two justices should make such an adjudication, yet the sessions must inquire into the truth of it; and if no order appears, which charges any parish within the hundred, it is a sufficient ground for the sessions to act. If the two justices had charged any parish within the hundred, that would

have stopped the sessions from proceeding; and the sufficiency of the hundred depends on this, whether two justices have ever charged the hundred.—*If the said hundred shall not be thought by the said justices able*,—that is, if the two justices do not adjudge it so. If two justices should adjudge the hundred not able, yet if other two justices adjudge the contrary, their charge would be good, and the sessions be ousted of their jurisdiction, notwithstanding the first adjudication. *Eyre J.* Here are two jurisdictions, that of the two justices, and that of the sessions, and both are original jurisdictions. They are different in all respects, for the two justices have no power out of the hundred, nor the sessions within it. There need be no appeal from an adjudication of two justices, for that would be to appeal from a nullity. And the order was confirmed. *Str.* 56.

iii. *How far parents and children are liable to maintain each other.*

Parents and children mutually liable.

I. *The father and grandfather, mother and grandmother, and children of every poor, old, blind, lame and impotent person, or other poor person not able to work, being of a sufficient ability, shall at their own charges relieve and maintain every such poor person, in that manner, and according to that rate, as by the justices of that county where such sufficient persons dwell in their sessions shall be assessed; on pain of 20s. a month: 43 El. c. 2. s. 7.*

Which penalty shall go to the use of the poor of the same parish, and be levied by some or one of the churchwardens or overseers, by warrant from two such justices (1 Q.) by distress; or in defect thereof any two such justices may commit the offender to the common gaol, there to remain without bail or mainprize, till the said forfeitures shall be paid. s. 2, 11.

Father and mother] *T. 9 An. Q. and Clentham.* It was moved to quash an order upon the father in law, to maintain his wife's daughter, his wife being dead. By the whole court; The husband ought to provide for the daughter in law during the wife's life, in the right of his wife; but when the wife dies, the relation is dissolved, and he is not by any means obliged to provide for the daughter in law after her mother's death. *Foley* 39.

E. 10 An. 2. and St. Botolph's Aldgate. The single question was, Whether the husband shall be chargeable to maintain his wife's children by a former husband: And it was resolved, he was, during the wife's life, in her right; but not after. *Foley 42.*

There was an order upon the mother, who was married to a second husband, to maintain her children which she had by the former husband: But by the court, a feme covert cannot be charged, but they ought to have charged her husband. *Foley 44.*

M. 7 G. 2. K. and Dempson. It was moved to quash an order upon the father to pay a certain sum weekly to his son's wife, his son having run away from her as soon as he married her, and she having had a child in the mean time. To this order two exceptions were taken: First, that it appears the son's wife was an adulteress; and therefore the husband himself would not have been bound to maintain her, much more the husband's father could not. To this it was answered, and allowed by the court, that whatever effect this act of the wife might have upon the husband, it could not have any upon the parish. Secondly, it was objected, that the statute extends only to natural relations, and for this purpose was cited the case of *K. and Munden* (hereafter following): and the court was of opinion that this objection was fatal, and that the act doth not extend to relations in law. *2 Barnardist. 329, 364.* Note, Sir John Strange in his report of this case says, that the order was for the father to maintain the son's wife, after a divorce *a mensa & thoro* for adultery. *Str. 955.*

Grandfather and grandmother] *M. 7 C. K. and Reeve.* The reputed grandfather or grandmother are not within the statute; for a bastard is *filius populi*. *2 Bulst. 344.*

H. 7 Cha. Gerard's case. If a man marries a grandmother, and has an estate with her in marriage; for this estate he shall be charged to be contributory towards the relief and maintenance of the grandchild, within the meaning of this statute: but otherwise it shall be, if he has not any estate or advancement by his marriage with her. By *Whitlocke* and *Croke* justices—But by *Croke J.* He shall be charged with keeping the grandchild during the life of the grandmother his wife; and if she dies, he shall not be charged after her death. *2 Bulstr. 346.*

But by *Holt Ch. J.* If the wife dies, he must maintain the grandchildren, though the relation be determined. And he said, that in *Gerard's* case, who married the grandmother of a poor person, though she died, and so the relation was determined, yet the statute was to be construed by equity, and that he was a grandfather within the statute. *Comb. 321, 405.*

But in the case in 2 *Bulstr. 346.* it does not appear that the grandmother was dead; nor is there any resolution, the judges differing in their opinions. *Vin. Poor. A. vol. 16. page 417.*

Upon the whole, the distinction seems to be this: If a mother or grandmother marries again, and was before such second marriage of sufficient ability to keep the child, the husband shall be charged to maintain it; for this being a debt of hers when single, shall like others extend to charge the husband; but at her death, the relation being dissolved, the husband is under no farther obligation. 1 *Blackst. c. 16.*

And though the father be living, yet if he be unable, the grandfather being of ability, may be compelled to keep the grandchild; and also to pay so much money as the justices shall think reasonable for the time past. *M. 6 An. 2. and Joyce. Vin. Poor. C. 3.*

And children] *T. 5 G. K. and Munden.* Order, reciting that *Munden* had a good fortune with his wife, and that her mother was poor, therefore he is ordered to provide for her. By *Pratt Ch. J.* The cases which have hitherto been, were either where the judges were divided, or the matter came not directly in question, or was only a case at the judge's chamber. It never came judicially before the whole court till now. And as it is *res integra*, on consideration we are all of opinion, that the son in law is not bound, either within the words or intent of the statute, which provides only for natural parents. By the law of nature, a man was bound to take care of his own father and mother. But there being no temporal obligation to enforce that law of nature, it was found necessary to establish it by act of parliament, and that can be extended no farther than the law of nature went before, and the law of nature doth not reach to this case. And the order must be quashed. *Str. 190.* But it doth not appear from this report, whether the wife was alive or dead: Perhaps she might be dead, and thereby the relation determined.

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In the case of *Walton and Spark, E. 7 W. Holt Ch. J.* said, that the word *children* in the statute extends to grand-children; because there is the same natural affection. *Cases of S. 210.*

But no case hath occurred, wherein the same hath been judicially determined. And perhaps there may be some doubt as to this point. Natural affection descends more strongly than it ascends. And it is observable, that whereas the statute of the 39 *El. c. 3.* did only enact, that *parents* and *children* should mutually maintain each other, this statute of the 43 *El.* enlarging this branch, extends it to *grandfathers* and *grandmothers*, but doth not specify *grandchildren*; by which it may seem, that the parliament did not intend, that the obligation should extend to them.

Of every poor, old, blind, lame, and impotent person, or other poor person not able to work] *M. 13 W. St. Andrews Underhaft and Jacob Mendez de Breta.* The defendant being a jew, had an only daughter, who was converted from judaism, and embraced christianity. Whereupon the defendant turned her out of doors, and refused to allow her any maintenance. On complaint to the sessions, they reciting that she was the daughter of the defendant, and that he was a man able to maintain her, made an order that the defendant (being very rich) should allow her 20s. a month. But because they did not alledge that she was poor, or likely to become chargeable, the order was quashed. *L. Raym. 699.*

E. 1 G. K. and Gulley. It was moved to quash an order of sessions. The order set out, that one *Mary Gulley* was in a poor destitute condition, and that her father was able to maintain her, and therefore they make an order upon him to allow her 2s. 6d. a week till further order. bje Cted, It did not appear that she was lame, blind, or unable to work; so that though she was in a destitute condition, it might be because she would not work: And upon this exception the court quashed the order of sessions. *Feloy 47.*

Being of a sufficient ability.] *H. 12 An. 2. and Halifax.* Order for the father in law to pay so much a week to his daughter in law, was quashed, because it was not said that he was of a sufficient ability. *Cases of S. 52.*

In that manner, and according to that rate, as by the justices of that county where such sufficient persons dwell in their

sessions shall be assessed] E. 5 An. *Jenkins's case*. An order of sessions was made, that the defendant shall pay 2s. a week towards the support of his father, till that court should order the contrary. Which was held good; because it was *indefinite*; and no set time limited: and if an estate happened to fall to him, they might apply to the justices; otherwise; if a time was limited. 2 Salk. 534.

By the justices of that county where such sufficient persons dwell] Therefore if the child live in the county of *Middlesex*, and be maintained by the parish there, and the grandfather live in the county of *Suffolk*, the justices of *Middlesex* can make no order therein, but the justices of the county of *Suffolk* must make order. 2 Bulst. 346.

In their sessions shall be assessed] T. 9 An. 2. and *Jones*. There was an order for the grandmother to take care of her grandchildren, and by the order they send the grandchildren to the grandmother. By the whole court, They cannot send the grandchildren to the grandmother; but the justices ought to have made a rate upon the grandmother of so much a week. *Foley* 41.

And it is said, that in the order of sessions it ought to appear, that the party to be relieved is become chargeable to the parish; for unless he be so, the parish has no ground of complaint. *Vin. Poor. C. 7. K. and Tripping*.

On pain of 20 s. a month—to be levied by distress] T. 32 & 33 G. 2. K. and *Robinson*. The defendant was indicted for refusing to obey an order of sessions, for maintaining his two infant grandchildren. It was moved in arrest of judgment; and urged, that this is a new offence; and where a statute creates a new offence, and gives a particular penalty, and a specific method of recovering the same, that course ought to be pursued, and the party shall not be punished by indictment. By lord *Mansfield* chief justice: The rule is certain, that where a statute creates a new offence, by prohibiting and making unlawful any thing which was lawful before, and appoints a specific remedy against such new offence, by a particular sanction and particular method of proceeding; that method must be pursued, and no other: But where the offence was antecedently punishable by a common law proceeding, and a statute prescribes a particular remedy by a summary proceeding; there, either method may be pursued, and the prosecutor is at liberty to proceed

proceed either at common law, or in the method prescribed by the statute, because there the sanction is cumulative, and doth not exclude the common law punishment. In the present case, a remedy existed before the statute of the 43 *El.* For disobedience to an order of sessions is an offence indictable at common law. So that here are two remedies; one, to proceed by way of indictment for disobeying the order, where the weekly payment is neglected or refused to be made; the other, to distrain for the 20 s. penalty after neglect of payment for a month. The former method has been taken in the present case: And there is no doubt but that an indictment will lie for disobeying an order of sessions. And the court were unanimously of opinion, that the judgment ought not to be arrested, *Burrow, Mansfield.*

799.

2. *Whereas sometimes men run away, leaving their wives and children, and sometimes women run away, leaving their children upon the charge of the parish, although such persons have some estates which should ease the parish of their charge, in whole or in part; It shall be lawful for the churchwardens or overseers, where any such wife, child, or children shall be so left, on application to, and by warrant or order of two justices, to take and seize so much of the goods and chattels, and receive so much of the annual rents and profits of the lands and tenements of such husband, father, or mother, as such two justices shall order and direct, towards the discharge of the parish or place where such wife, child, or children are left, for the bringing up and providing for such wife, child, or children; which warrant or order being confirmed at the next quarter sessions, it shall be lawful for the justices there, to make an order for the churchwardens or overseers, to dispose of such goods or chattels by sale or otherwise, or so much of them, for the purposes aforesaid, as the court shall think fit, and to receive the rents and profits, or so much of them as shall be ordered by the said sessions, of his or her lands and tenements for the purposes aforesaid.* 5 G. c. 8. s. 1.

And the said churchwardens and overseers shall be accountable to the justices at the quarter sessions for all such money as they shall so receive. s. 2.

And further to compel husbands and parents to maintain their own families, the law hath also provided, that all persons running away out of their parishes, and leaving their families upon the parish, shall be deemed and suffer as incorrigible rogues. 7 J. c. 4. s. 8.

And

And if a person doth but threaten to run away, and leave his wife or children upon the parish; he shall, on conviction, before one justice by confession, or oath of one witness, be committed to the house of correction, for any time not exceeding one month. 17 G. 2. c. 5.

And by the 7 J. c. 4. If any man or woman shall threaten to run away and leave their families upon the parish, and the same be proved by two witnesses on oath before two justices of that division; the person so threatening shall be sent to the house of correction (unless he can put in sufficient sureties for the discharge of the parish) there to be dealt with as a sturdy and wandering rogue, and to be delivered at the sessions, and not otherwise. s. 8.

Form of an order to seize the goods, and receive the rents of the lands, of parents or husbands having run away.

Westmorland. { To the churchwardens and overseers of
the poor of the parish of _____ in the
said county.

WHEREAS it appears unto us whose names are hereunto set and seals affixed, two of his majesty's justices of the peace for the said county, as well upon the complaint and application of the churchwardens and overseers of the poor of the parish of _____ aforesaid, in the county aforesaid, as upon due proof upon oath before us made, that A. O. late of the parish of _____ aforesaid, in the county aforesaid, yeoman, hath gone away from his place of abode at _____ in the parish aforesaid, into some other county or place, and hath left _____ his wife, and _____ their children, upon the charge of the parish of _____ aforesaid, the place of their last legal settlement, and that the said A. O. hath some estate whereby to ease the said parish of their said charge, in whole or in part; We do hereby authorize and command you the said churchwardens and overseers of the poor of the parish of _____ aforesaid, to take and seize _____ and _____, and to receive the annual rents and profits of the lands and tenements of him the said A. O. at _____ aforesaid, for and towards the discharge of the said parish, for the providing for and bringing up of his said wife and children: And with this warrant you are to appear, at the next quarter sessions of the peace to be holden for the said county, and certify then and there what you shall have done in the execution hereof. Given under

under our hands and seals, at _____ in the said county, the
_____ day of _____ in the year _____

FOR the further maintenance of the poor, there are many fines and forfeitures payable to their use; as for swearing, drunkenness, destroying the game, and in many other instances, which are to be found under their proper titles.

And also parts of wastes, woods, and pastures may be inclosed for the growth and preservation of timber and underwood for their relief; as is set forth under the title *Wood*.

V. Of the relief and ordering of the poor.

1. By the several statutes all along, the poor were to resort or be sent to their own parishes to be relieved; and there seemeth to be no power given to the churchwardens and overseers, by any statute now in force, (except in the case of certificate persons, and of contracting as is herein after mentioned) to relieve any persons out of their own parish, much less any obligation upon them to exercise that part of their office out of their own jurisdiction.

And in the case of *Clypton and Ravistock, E. 11 An.* It was adjudged as follows: There was an order reciting, Whereas *John Saunderson* and his wife are last settled in *Clypton*; these are to order you the churchwardens of *Clypton*, to repair to the parish of *Ravistock*, and to relieve them, being so sick that they cannot be removed. By the court; The justices have no authority to send for officers out of another parish, but the parish where the poor reside are bound to maintain them as long as they continue with them. And by *Powell J.* although they be not parishioners, yet they are to be relieved till they are carried to their own parish. *Case of S. 49.*

2. By the 43 *El. c. 2.* The churchwardens and overseers, with the consent of two justices (1 Q.) shall take order from time to time, for setting to work the children of all such whose parents shall not by the said churchwardens and overseers, or the greater part of them, be thought able to keep and maintain their children; and for setting to work all such persons, married or unmarried, having no means to maintain them, and using no ordinary and daily trade; and for the necessary relief of the lame, impotent, old, blind, and such other among them being poor, and not able to work. s. 1.

Order to be taken therein.

And

And the said justices, or one of them, shall send to the house of correction, or common gaol, such as shall not employ themselves to work, being appointed thereunto as aforesaid. s. 4.

Poor, and not able to work] *M. 3 G. K.* and the inhabitants of *Highworth*. There was an order to pay 3s. weekly to a poor person, by the parish of *Highworth*, so long as he shall continue poor. It was objected, that by the statute it ought to appear that they are poor and impotent. *Parker Ch. J.* I favour these orders as much as I can, because nobody takes care to draw them up for the poor. But it must be quashed. *Str. 20.*

On the authority of this case, *E. 3 G. K.* and *Stoke-gurfey*, an order was quashed for the same fault. So *E. 4 G. K.* and *Tipper*, an order to maintain a daughter in law. *id.*

For the necessary relief] *E. 1 G. 2. K.* and *Colbitch*. An order of sessions was made upon the overseers of this parish, that they should pay a surgeon his bill for curing certain poor under their care. The court said, that the sessions have no power to make such orders; and so quashed it. *1 Barnardist. 46.*

M. 6 G. 2. K. and *Woodsterton*. An order was made by two justices upon the officers of the parish of *Woodsterton*, for paying 5l. upon account of a poor inhabitant of that parish when he was in gaol, and likewise for paying a surgeon's bill that was due upon his account; which order was confirmed at the sessions. It was moved to quash these orders. And upon shewing cause, it was urged, that the justices have only power to order parish officers to relieve a poor inhabitant where it is fit he ought to be relieved. But in the present case, the parish officers have actually given the party relief. They employed a surgeon, and a nurse, to take care of him. The surgeon and nurse have a proper remedy by way of action against the officers; and the justices have no pretence to interfere in this matter. And the court were of opinion that these orders should be quashed. *2 Barnardist. 207, 247.*

3. By the 3 C. c. 4. The churchwardens and overseers may, by the consent of two justices (1 Q.) within their respective limits, wherein shall be more justices than one; and where no more shall be than one, with the assent of that one justice, set up and use any trade, mystery or occupation, only for the setting on work and better relief of the poor. s. 22.

4. The

4. The churchwardens and overseers, or the greater part of them, by the leave of the lord of the manor, whereof any waste or common within the parish is parcel, and on agreement with him made in writing, under his hand and seal; or otherwise, according to any order to be set down by the justices in sessions, by like leave and agreement of the lord in writing under his hand and seal, may build in fit and convenient places of habitation in such waste or common, at the charge of the parish, or otherwise of the hundred or county as aforesaid, to be rated and gathered in manner before expressed, convenient houses of dwelling for the said impotent poor; and may place inmates, or more families than one, in one cottage or house, notwithstanding the statute of the 31 El. Which cottages, or places for inmates, shall not be employed for any other habitation, but only for impotent and poor of the same parish placed there by the churchwardens and overseers. 43 El. c. 2. s. 5.

Erecting cottages.

5. It shall be lawful for the churchwardens and overseers, in any parish, township, or place, with the consent of the major part of the parishioners or inhabitants, in vestry, or other parish or publick meeting for that purpose assembled, or of so many of them as shall be so assembled, upon usual notice thereof first given, to purchase or hire any house or houses, in the same parish, township, or place, and to contract with any person or persons for the lodging, keeping, maintaining, and employing any or all such poor in their respective parishes, townships, or places, as shall desire to receive relief or collection, and there to keep, maintain, and employ all such poor persons, and take the benefit of the work, labour, and service of any such poor persons, who shall be kept or maintained in any such house or houses, for the better maintenance and relief of such poor persons, who shall be kept or maintained. And if any poor person shall refuse to be lodged, kept, or maintained, in such house or houses, he shall be put out of the parish book, and shall not be intitled to receive relief from the churchwardens and overseers. 9 G. c. 7. s. 4.

Overseers may contract for the maintenance and employment of the poor.

M. 7 G. 3. K. and Carlisle. The defendant was indicted for disobeying an order of sessions. The case was, Jane Carr the pauper, having been delivered of two bastard children, was taken into the poor house of the parish of St. Mary's in Carlisle, which had been there established according to the 9 G. c. 7. There she and her children were maintained for a year and an half. Then the parish officers agreed to allow her one shilling a week, towards the maintenance of herself and children. After six months they refused to continue the payment, but offered to take her and her children again into the poor

poor house. She prayed them to take one child, and said she would take care of the other. That being refused, she offered to take sixpence a week. But the parish officers persisted in giving her no relief, unless she would come again into the poor house. Whereupon she applied to the general quarter sessions for the county of Cumberland; who made an order on the churchwardens and overseers to pay her one shilling a week, towards the maintenance of herself and her two bastard children, until further order. She served the defendant, being one of the overseers, with the order; and demanded payment, which he refused; but at the same time offered (as he had done several times before the obtaining the said order) to take her and her children into the poor house. The question saved at the assizes for the opinion of the judges was, Whether under these circumstances the defendant was by law impowered to refuse payment of such weekly allowance? And the case being laid before the judges, they were all of opinion, upon considering the words of the statute, that under the circumstances of this case, the defendant was by law impowered to refuse payment of such weekly allowance.

Two or more
places may join,

6. *And where any parish or township shall be too small to purchase or hire such house or houses, it shall be lawful for two or more such parishes, townships, or places; with the consent of the major part of the parishioners or inhabitants of their respective parishes, townships, or places, in vestry or other parish or publick meeting for that purpose assembled; or of so many of them as shall be so assembled, upon usual notice thereof first given, and with the approbation of any justice of the peace dwelling in or near any such parish, township, or place, signified under his hand and seal, to unite in purchasing, hiring, or taking such house, for the lodging, keeping, and maintaining of the poor of the several parishes, townships, or places so uniting, and there to keep, maintain, and employ the poor of the respective parishes, townships, or places so uniting and to take and have the benefit of the work, labour, or service of any poor there kept and maintained, for the better maintenance and relief of the poor there kept, maintained and employed; and if any poor in the respective parishes, townships, or places so uniting, shall refuse to be lodged, kept, and maintained in the house hired or taken for such uniting parishes, townships, or places, he shall be put out of the collection book, and not intitled to ask relief:*

And it shall be lawful for the churchwardens and overseers of any parish, township, or place, with the consent of the ma-

for

for part of the parishioners or inhabitants of the said parish, township, or place, where such house or houses shall be purchased or hired for the purposes aforesaid, in vestry or other parish or publick meeting for that purpose assembled, or of so many of them as shall be so assembled, upon usual notice thereof first given, to contract with the churchwardens and overseers of any other parish, township, or place, for the lodging, maintaining, or employing of any poor person or persons of such other parish, township, or place, as to them shall seem meet; and if any poor person of such other parish, township, or place, shall refuse to be lodged, maintained, and employed in such house or houses, he shall be put out of the collection book, and not be intitled to have relief: Provided, that no poor person, his apprentice, or child, shall acquire a settlement in the parish, town, or place, to which he shall be removed by virtue of this act; but his and their settlement shall be and remain, in such parish, town, or place, as it was before removal. 9 G. c. 7. s. 4.

7. There shall be provided and kept in every parish, a book wherein the names of all persons who receive collection shall be registred, with the day and year when they were first admitted to have relief, and the occasion which brought them under that necessity: and yearly in Easter week, or as often as shall be thought convenient, the parishioners shall meet in the vestry or other usual place of meeting in the parish, before whom the book shall be produced, and all persons receiving collection to be called over, and the reasons of their taking relief examined, and a new list made and entred of such persons as they shall think fit and allow to receive collection. 3 W. c. 11. s. 11.

Persons relieved to be entred in a book.

8. And no other person shall be allowed to receive collection at the charge of the parish, but by authority under the hand of one justice residing within such parish, or (if none be there dwelling) in the parts near or next adjoining, or by order of the justices in sessions, except in cases of pestilential diseases, plague, or small-pox, for such families only as shall be therewith infected. 3 W. c. 11. s. 11.

No others to be relieved, but by order of the justices.

And no justice shall order relief to any poor person, until oath be made before him of some matter, which he shall judge to be a reasonable cause for having such relief; and that the same person had by himself, or some other, applied for relief to the parishioners at some vestry or other publick meeting, or to two of the overseers, and was by them refused to be relieved; and until such justice hath summoned two of the overseers to shew cause why such relief should not be given, and the person so summoned hath been heard or made default to appear. 9 G. c. 7. s. 1.

And

And if any churchwarden or overseer, or person authorized by him, shall wilfully and knowingly make any payments to the poor in any base or counterfeit money, or in any other than lawful money of Great Britain; one justice, on complaint, may summon the offender, and on his non-appearance, or confession, or proof of the offence by the oath of one witness, may adjudge him to forfeit not less than 10 s. nor more than 20 s. to be levied by distress, and to be applied to the use of any poor person or persons of the parish or place respectively as the justice shall appoint. 9 G. 3. c. 37. s. 7.

And the person whom such justice shall think fit to order to be relieved, shall be entered in such book, as one of those who is to receive collection, as long as the cause for such relief continues, and no longer. And no officer shall (except upon sudden and emergent occasions) bring to the account of the parish, any money he shall give to any poor person who is not registered in such book, as a person intitled to receive collection; on pain of 5 l. by distress, by warrant of two justices, who shall have examined into and found him guilty of such offence; which said sum shall be applied to the use of the poor by direction of the justices. 9 G. c. 7. s. 2.

Persons relieved
to be badged.

9. Moreover, Every such person as shall be upon the collection, and receive relief of any parish or place, and the wife and children of any such person cohabiting in the same house (such child only excepted, as shall be by the churchwardens and overseers permitted to live at home, in order to attend an impotent and helpless parent) shall upon the shoulder of the right sleeve of the uppermost garment, in an open and visible manner, wear a large Roman P, together with the first letter of the name of the parish or place, whereof such poor person is an inhabitant, cut either in red or blue cloth, as by the churchwardens and overseers shall be directed: And if any such poor person shall neglect or refuse to wear any such badge or mark, it shall be lawful for one justice to punish such offender, either by ordering his allowance to be abridged, suspended, or withdrawn, or otherwise by committing him to the house of correction, to be whipt and kept to hard labour, not exceeding 21 days; And if any churchwarden or overseer shall relieve any such poor person, not wearing such badge, and be thereof convicted on oath of one witness before one justice, he shall forfeit 20 s. by distress, half to the informer and half to the poor. 8 & 9 W. c. 30. s. 2.

Spirituous li-
quors not to be
used in work-
houses.

10. By the 24 G. 2. c. 40. No spirituous liquors shall be sold or used in any workhouse, or house of entertainment for parish poor; as is set forth more at large, in the article relating to spirituous liquors, under the title Excise.

THE above-mentioned statute of the 9 G. c. 7. hath been very beneficial in practice; but the matter seemeth at length to have been carried too far; the overseers in many places having found out a method of contracting with some obnoxious person, of savage disposition; for the maintenance of their poor: not with any intention of the poor being better provided for, but to hang over them *in terrorem*, if they will not be satisfied with the pittance which the overseers think fit to allow them. And one such taskmaster oftentimes undertakes for the poor of several parishes or townships. But the justices have power, by with-holding their assent, to prevent any bad use being made of this kind of traffick.

Oath of a poor person wanting maintenance.

A. P. of ——— in the parish of ——— in the county of ——— maketh oath, that he is very poor and impotent; and not able to provide for himself and his family, and that on ——— last he did apply for relief to the parishioners of the said parish at a vestry, (or other publick) meeting [or, to two of the overseers of the poor of the said parish] and was by them refused to be relieved.

A. P.

Taken and made before me one of his
majesty's justices of the peace for
the said county, the ——— day of

J. P.

Warrant thereupon to summon the overseers.

Westmorland. { To the constables of ——— in the pa-
rish of ——— in the said county, and
to every of them.

WHEREAS A. P. of your parish hath this day made oath before me ——— one of his majesty's justices of the peace in and for the said county, that he the said A. P. is very poor and impotent, and not able to provide for himself and his family; and that he the said A. P. did on ——— last apply to the parishioners of your said parish at a vestry (or other publick) meeting [or, to A. B. and C. D. two of the over-

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seers

seers of the poor of the said parish] and was by them refused to be relieved: These are therefore to require you in his said majesty's name, to summon two of the overseers of the poor of the said parish, to appear before me on——next at the house of——in——in the said county, at the hour of——in the forenoon of the same day, to shew cause why relief should not be given to the said A. P.. And be you then there with this precept, to certify what you shall have done in the execution hereof. Given under my hand and seal the——day of——in the——year——

Order for maintenance.

Westmorland. **W**HEREAS A. P. of——in the parish of——in the said county of——hath made oath before me——one of his majesty's justices of the peace for the said county, that he the said A. P. is very poor and impotent, and not able to work; and that he the said A. P. did on——last apply for relief to the parishioners of the said parish of——at a vestry, (or, publick) meeting [or, to A. B. and C. D. two of the overseers of the poor of the said parish] and was by them refused to be relieved; And whereas A. B. and C. D. overseers of the poor of the said parish, have been duly summoned by me, to shew cause why relief should not be given to the said A. P. and have appeared before me in pursuance of such summons, but have not made any sufficient cause to appear as aforesaid [or, but have made default to appear before me according to such summons:] I do therefore hereby order the churchwardens and overseers of the poor of the said parish, or some of them, to pay unto the said A. P. the sum of——weekly and every week, for and towards his support and maintenance, until such times as they shall be otherwise ordered according to law to forbear the said allowance. Given under my hand and seal at——in the said county, the——day of——in the——year——

Contract for maintenance.

AT a publick meeting of the inhabitants of the parish of——in the county of——for that purpose assembled upon usual notice thereof first given; it is contracted by and with the consent of the major part of the said inhabitants so assembled as aforesaid, between A. B. and C. D. churchwardens

wardens, and E. F. and G. H. overseers of the poor of the said parish, of the one part, and A. M. of — in the said parish, yeoman, of the other part; That he the said A. M. shall and will during the space of one whole year to commence from — next ensuing, at his own proper costs and charges, in the house in which he now dwelleth, find, provide, and allow unto all such poor people, as shall be lawfully intitled to relief and maintenance from the said parish, and shall be brought unto him by the churchwardens or overseers of the poor aforesaid, or any of them, or by their or any of their successors for the time being, sufficient lodging, meat, drink, clothing, employment, and other things necessary for their keeping and maintenance: And that in consideration thereof, the said churchwardens and overseers of the poor, and their successors respectively, shall pay or cause to be paid to the said A. M. the sum of — in equal proportions — The said A. M. to have moreover and take unto himself the benefit of the said poor people's work, labour, and service during the said term. In witness whereof the parties to these presents have hereunto set their hands, the — day of —.

It may perhaps be requisite to insert a clause more particularly with respect to the article of *cloathing*; setting forth in what condition they shall go, and in what condition be delivered back again.

As also, if they shall *die*; who shall be at the expence of burying them, and the like.

As also, if they shall be *refractory* or ungovernable; who shall be at the charge of sending them to the house of correction, or otherwise reducing them to good behaviour.

And other clauses as there may be occasion.

If two parishes or townships shall join in such contracting, it will be necessary to insert in the contract, the consent of a justice of the peace; as thus,

— by and with the consent of the major part of the said inhabitants so assembled as aforesaid respectively, and also by and with the consent of J. P. esquire, one of his majesty's justices of the peace for the said county, dwelling in the said parish of — [or, near to the said parishes, or townships of] —

And the assent of the said justice may be indorsed thereon, as follows;

I ——— esquire, one of his majesty's justices of the peace for the within mentioned county of ——— and dwelling in the within mentioned parish of ——— [or, near to the within mentioned parishes, or townships of ———] do consent unto, allow, and approve of the within written contract. Given under my hand and seal the ——— day of ———.

VI. Of the overseers account.

Account.

1. By the 43 El. c. 2. The churchwardens and overseers shall, within four days after the end of their year, and other overseers nominated, make and yield up to two justices (1 Q.) a true and perfect account of all sums by them received, or rated and assessed and not received, and also of such stock as shall be in their hands. or in the hands of any of the poor to work, and of all other things concerning their office: And such sums of money as shall be in their hands, shall pay and deliver over to their successors: And the subsequent churchwardens or overseers, by warrant from two such justices, may levy by distress and sale of the offender's goods, the said sums or stock which shall be behind on any account to be made; and in defect of such distress, two such justices may commit him to the common gaol, there to remain without bail or mainprize, until payment of the said sum and stock: And also any such two justices may commit to the said prison, every one of the said churchwardens and overseers, which shall refuse to account, there to remain without bail or mainprize, until he have made a true account, and satisfied and paid so much as upon the said account shall be remaining in his hands. s. 2. 4.

And by the 17 G. 2. c. 38. It is enacted as follows: The churchwardens and overseers shall yearly, within fourteen days after other overseers shall be appointed, deliver in to the succeeding overseers a just account in writing, fairly entred in a book to be kept for that purpose, and signed by them, of all sums by them received, or rated and not received; and also of all materials that shall be in their hands, or in the hands of any of the poor to be wrought, and of all money paid by such churchwardens and overseers so accounting, and of all other things concerning their office; and shall also pay and deliver over all sums of money and other things, which shall be in their hands, to the succeeding overseers; which account shall be verified by oath before one justice, who shall sign and attest the taking of the same, at the foot of the account, without fee; and the said books shall be preserved by the churchwardens and overseers; in some publick or other place within the parish or township; and they shall permit any person assessed, or liable to

be assessed, to inspect the same at all seasonable times, paying 6 d. for such inspection; and shall upon demand give copies at the rate of 6 d. for every three hundred words, and so in proportion. And if they shall refuse or neglect to make and yield up such account, verified as aforesaid, within such time, or shall refuse or neglect to pay over the money and other things in their hands; any two justices may commit them to the common gaol, till they shall have given such account, or shall have paid and yielded up such money and other things in their hands as aforesaid. s. 1, 2.

Churchwardens] M. 15 G. 2. K. and Pecke. The churchwarden was committed for refusing to account for all monies received and disbursed by him, and of all such things as concern his office. But upon an *habeas corpus* he was discharged; for if he be committed as overseer, it must be so expressed in the *mittimus*, although to be overseer be annexed to the office of churchwarden, for the justices have no power over him as churchwarden. 1 Keb. 574.

Such money as shall be in their hands, shall pay and deliver over to their successors] M. 8 G. 2. K. and the justices of Somersetshire. *Mandamus* to the justices, to grant a warrant for levying 30 l. 17 s. 11 d. being the balance of the last overseers account in their hands. They return, that true it is there was such a balance, but that the vestry had ordered them to retain it, and employ an attorney to sue for some charity money, and get it laid out for the benefit of the poor; that one Young was so employed, and the balance exhausted in fees, and that the overseers had engaged to pay Young; and for that cause they had refused to grant the warrant. But by the court, There must go a peremptory *mandamus*; for the statute says, the balance shall be paid over to the new overseers, under a penalty; and it is not in the power of the vestry to dispense with the statute. Str. 992.

Until he have made a true account] T. 2 W. The mayor and churchwardens of Northampton. The mayor committed the churchwardens, as overseers of the poor, for refusing to account, and the warrant of commitment concluded, until they be duly discharged according to law. The court held the commitment void; because the warrant ought to conclude, there to remain until they shall account, as the statute doth appoint. And the difference is, where a man is committed as a criminal, and where only for contumacy;

contumacy; for in the first case, the commitment must be, until discharged according to law; but in the latter, until he comply and perform the thing required; for in that case, he shall not lie till a sessions, but shall be discharged upon performance of his duty, *Carth.* 152.

Which account shall be verified by oath before one justice.] H. 19 G. 2. K. and the justices of Middlesex. A mandamus was moved for, to be directed to the justices to swear William Carr late overseer of the poor of the parishes of St. Andrew and St. George the martyr, to the truth of his accounts, upon an affidavit made by Carr that he had delivered in an account to the justices, and was ready to swear to the truth thereof, but that they had refused to swear him. On behalf of the justices, it was objected, that the account consisted of gross sums, and that the justices asked him some questions touching the particulars, which he refused to answer, and therefore they refused to swear him to his account. By the court: A mandamus is a matter of course, and we cannot refuse to grant it. If the justices have any legal objection, they may return it upon the mandamus. 1 Wilson. 125.

And if any person thinks himself aggrieved by the account, he may have his remedy by appeal.

And the said books shall be preserved by the churchwardens and overseers] T. 24 & 25 G. 2. K. & Clapham. A mandamus was granted to oblige the old overseer to deliver over the books of the poor rates to the new overseer; for, by the court, They are public books, and ought to be delivered over by one overseer to another, that all the parishioners may have access to them, and the overseer and churchwarden for the time being ought to have the custody thereof. 1 Wilson. 305.

Overseer removing or dying.

2. *And if any overseer shall remove, he shall before his removal, deliver over, to some churchwarden or other overseer, his accounts, verified as aforesaid, with all assessments, books, papers, money, and other things concerning his office; and if any overseer shall die, his executors or administrators shall within 40 days after his decease, deliver over all things concerning his office to some churchwarden or other overseer, and shall pay out of the assets all money remaining due, which he received by virtue of his office, before any of his other debts are paid. 17 G. 2. c. 38. s. 3.*

Appeal against the account.

3. *By the 43 El. c. 2. If any person shall find himself aggrieved by any act done by the said overseers or justices; he may appeal to the general quarter sessions, whose order therein shall bind all parties.*

And

And this power of appealing generally, doth not seem to be taken away by the statute here next following; but the same being only in the affirmative, it seemeth that they may both stand together, and that the appeal may be upon either of the statutes.

And upon this statute of the 43 *El.* the appeal is not limited to the next sessions, but may be at any time after.

The other statute above-mentioned, with regard to this matter, is as follows: *If any person shall have any material objection to such account or any part thereof, he may, giving reasonable notice, appeal to the next sessions; but if reasonable notice be not given, then they shall adjourn the appeal to the next sessions after; and the court may award costs to either party, as in cases of settlement by the 8 & 9 W. 17 G. 2. c. 38. f. 4.*

So that here is a power to award costs, if the appeal is to the next sessions; but if the appeal is upon the 43 *El.* and not to the next sessions, there is no power in such case to award costs.

And by the said statute of the 17 *G. 2. c. 38.* *In all corporations or franchises, which have not four justices, persons aggrieved may appeal, if they think fit, to the next county sessions. f. 5.*

M. 4 An. 2. and Hedges. On appeal upon the statute of the 43 *El.* against the allowance of the account by two justices, the sessions ordered the overseer to pay so much over, which they adjudged to be in his hands; and for not doing this, they committed him. But by the court: They should have levied the arrears by distress and sale, and in default of distress have committed him; for the sessions must execute their judgment, in the same manner as the two justices must do. *2 Salk. 533.*

T. 7 G. K. and Bartlett. An order made at the sessions relating to accounts of overseers, was moved to be quashed, because it did not appear that the accounts had been before the justices out of sessions, and they cannot come *per saltum* to the sessions. On the other side it was said, that it appeared there was an allowance, for the appeal is said to be against the disbursements and the allowance thereof, which the court will presume was regular. But by the court, It doth not follow, that this was an allowance by two justices, for the parish might do it; and therefore for want of jurisdiction this order must be quashed. *Str. 983.*

Allowance of the account.

Westmorland. **P**ERUSED and allowed (having been first signed and verified on oath by A. B. and C. D. churchwardens, and E. F. and G. H. overseers of the poor) by me one of his majesty's justices of the peace in and for the said county, the — day of —. J. P.

VII. Penalty of overseers for the neglect of their duty.

1. In general, Overseers being negligent in their office, shall forfeit for every default 20 s. to the poor, to be levied by one of the churchwardens or overseers, by warrant of two justices (1 Q.) by distress; or in defect thereof, any two such justices may commit the offender to the common gaol, there to remain without bail or mainprize, till the said forfeiture shall be paid. 43 El. c. 2. s. 2, 11.

2. And by the 17 G. 2. c. 38. Any parish officer neglecting to obey any directions of that act, being convicted thereof on oath before two justices, in two calendar months after the offence committed, shall forfeit not exceeding 5 l. nor less than 40 s. to the poor, by distress. s. 14.

3. And in all actions to be brought in the courts of Westminster, or at the assizes, for the recovery of any sum mispent or taken to their own use by the churchwardens or overseers, the evidence of the parishioners, other than such as receive alms, shall be admitted. 3 W. c. 11. s. 12.

VIII. Indemnity of overseers in the performance of their duty.

1. By the 7 J. c. 5. and 21 J. c. 12. If any action be brought against any overseer, or other person which in his aid, or by his commandment, shall do any thing concerning his office, he may plead the general issue, and if he recovers, he shall have double costs: And such action shall be laid in the proper county, and not elsewhere.

2. And by the 43 El. c. 2. Persons sued for any thing done on that act, may plead the general issue, and have treble damages with costs, and that to be assessed by the jury in case of the issue tried, or by a writ to inquire of the damages in case the plaintiff is nonsuit. s. 19.

Here endeth the THIRD VOLUME.

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